

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

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In the Matter of Application 11518 of Vail Company to Appropriate Water from Temecula Creek, Tributary to Santa Margarita River in Riverside County, for Irrigation and Domestic Purposes and Application 11586 of Fallbrook Public Utility District to Appropriate Water from Santa Margarita River, Tributary to Pacific Ocean in San Diego County, for Domestic, Municipal and Irrigation Purposes.

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Decision A. 11518, 11586 D 574

Decided *February 16, 1948*

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APPEARANCES AT HEARING HELD AT LOS ANGELES, DECEMBER 16, 1947:

For the Applicants

Vail Company

(O'Melveny & Myers
(By John Whyte

Fallbrook Public Utility District

(Lindley, Lazar, Johnson & Scales
(By Fred E. Lindley

For the Protestants

Vail Company

(O'Melveny & Myers
(By John Whyte

Fallbrook Public Utility District

(Lindley, Lazar, Johnson & Scales
(By Fred E. Lindley

Estate of Murray Schloss

Walter Gould Lincoln

Eleventh Naval District

(Captain A. K. Fogg
(Colonel L. S. Schwindler
(Lieutenant Commander Aubey
(Mr. S. E. Greene

Santa Margarita Mutual Water
Company

Harold Conkling

For the State Engineer

Gordon Zander, Principal Hydraulic Engineer in Charge of Water Right Administration, Division of Water Resources, Department of Public Works, State of California.

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OPINION

GENERAL DESCRIPTION OF THE PROPOSED DEVELOPMENTS

Application 11518 was filed on behalf of the Vail Company by Mahlon Vail, Managing Trustee, on August 16, 1946. It contemplates a diversion of 40,000 acre-feet per annum from Temecula Creek, the water to be stored temporarily and later applied to beneficial use. The collection period named is from November 1 to April 30. Water is to be used for irrigation and domestic purposes. The place of use described is 3797 acres in Pauba Ranch in Sections 5, 6, 7 and 18 of T 8 S, R 1 W; Sections 1, 10 to 21 inclusive, 28 and 29 of T 8 S, R 2 W; and Sections 13 and 24 of T 8 S, R 3 W; S.B.B.&M. The irrigation season is stated to begin about May 1 and to extend to about October 31. The domestic use proposed is described as that incidental to farming operations. Diversion is to be effected at what is designated as the Vail dam site, at the head of Nigger Canyon, on the Pauba Ranch. It lies within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T 8 S, R 1 W. The dam to be erected will create a reservoir of an estimated capacity of 41,140 acre-feet. A portion of the water thus stored is to be released into Temecula Creek, spread over the wash just below the mouth of Nigger Canyon and recovered by 4 pumps designated respectively as "J.K.", "Well 30", "Catarini" and "Lower". The location of the proposed dam, the spreading grounds, the pumps by which the spread waters are to be recovered, the boundary of the area of underground storage and the boundary of the area to be irrigated are shown on the map filed with the application. The two areas

last named are roughly coincident although the area to be irrigated is somewhat the larger of the two.

Application 11586 was filed in the name of Fallbrook Public Utility District by its president, J. E. Potter, on October 11, 1946. It contemplates a diversion of 2.5 cubic feet per second, throughout each year, for domestic, municipal and irrigation purposes. The source named is Santa Margarita River and the point of diversion is described as lying within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T 9 S, R 3 W, S.B.B.&M., in the County of San Diego. Diversion is to be effected by pumping. The capacity of the plant contemplated is given as 1500 gallons per minute. The water is needed to augment the present supply of the Fallbrook Public Utility District which is designated as the place of use. The area to be irrigated is given as 5000 acres and the population of the District is estimated at 3000. The domestic and municipal uses proposed are those relating to gardens, family orchards, livestock, poultry, residences and industries. The irrigation season is said to begin about April 1 and to end about November 1. As to its present supply the District names that derived from San Luis Rey River under Application 8156, Permit 5227 and that derived from private wells. The District asserts itself to be a public and municipal corporation, but states that there are no incorporated towns within its boundaries. The layout of the District and its points of diversion, both present and proposed, are shown on the map which accompanied the application.

PROTESTS

Against Application 11518: (Vail Company)

The Trustees of the Estate of Murray Schloss, as represented by Walter Gould Lincoln, attorney therefor, assert ownership of lands downstream from the applicant and situated on both sides of Temecula Gorge or Santa Margarita River for a distance of nearly 2 miles; and protest that the granting

of Application 11518 would deprive them of the opportunity of developing these lands and of the use of water for irrigation, domestic or stock watering purposes. These protestants claim a right to the use of water from the source from which diversion is proposed, basing such claim upon riparian ownership as well as upon the recorded judgment in the case of Rancho Santa Margarita v. Vail. They contend that the legal action referred to finally determined the rights to all the waters of the source in question, and that their rights have not been lost by non-user, prescription or severance. As to use made of water, these protestants state that they have raised various crops, pastured horses and beef cattle, and have accommodated many troops of Boy Scouts and camps of underprivileged boys who have used these lands for purposes of personal development, all of which enterprises have required considerable although unmeasured use of water.

In answer to the protest by the Trustees of the Schloss Estate the applicant concedes that the judgment therein mentioned settles questions relating to riparian ownership and asserts that rights dependent thereon will in no way be interfered with. Applicant argues, however, that the judgment did not determine the applicant's rights other than riparian but did recognize the applicant's right to construct reservoirs to impound flood waters, which construction, in the applicant's opinion, will increase low water flows and abate flood dangers, thereby benefiting rather than injuring lower users. The applicant asserts that the judgment requires the maintenance of a 3 cubic feet per second flow just above the protestant's lands and limits thereto downstream diversions based upon recognized riparian rights.

The Fallbrook Public Utility District protests on 2 main counts: First, that the proposed diversion would materially reduce the amount available to downstream users, including this protestant; and second, that this

protestant, as a municipal corporation organized for the primary purpose of supplying water for domestic use, has a prior and preferential right to appropriate unappropriated water from the source in question, and, hence, should have preference in the matter of permit action on pending applications to appropriate.

This protestant District represents itself to contain approximately 5000 acres and to serve water for domestic use within its boundaries. It represents itself to be increasing rapidly in population and in water requirements; and to have been working, for many years, in cooperation with the State Division of Water Resources and with the Federal Bureau of Reclamation on the problem as to the best method of increasing its supply from Santa Margarita River, with the avowed purpose of applying for additional water as soon as studies of the problem warrant. The protest mentions similar investigations as being in progress by the Engineer Corps of the Army.

This protestant, according to its protest, diverts at a point within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T 9 S, R 3 W, S.B.B.&M., this diversion tapping an underground basin fed and maintained by waters flowing in Santa Margarita River. It asserts that it has applied to the Division of Water Resources for further appropriations as follows: 2 $\frac{1}{2}$ cubic feet per second under Application 11586; 10,000 acre feet per annum under Application 11587 and 5000 acre feet per annum under Application 11593.

In answer to the protest by Fallbrook Public Utility District the applicant denies that the proposed project will reduce the amount of water which the protestant is entitled to divert from Santa Margarita River or from basins fed therefrom; states that the judgment in the case of Rancho Santa Margarita v. Vail requires the applicant to maintain a minimum flow at Temecula Canyon of 3 cubic feet per second from May to October inclusive which is more

than enough to satisfy the protestant's rights, which are limited to 90 gallons per minute, for domestic use only; that this right to 90 gallons per minute was granted voluntarily and is revocable; that Applications 11586, 11587 and 11593 are subsequent to Application 11518 and that inasmuch as they name irrigation as a purpose they enjoy no special advantage arising from the status of Fallbrook Public Utility District as a municipal corporation supplying water for domestic use; that Application 11593 is an ineffective basis for protest, access to the dam site named therein being controlled by the Vail Company; and that the argument as to good intention over a long period applies to the applicant as well as to the protestant.

The U. S. Navy, as represented by the Commandant, Eleventh Naval District, San Diego, protested Application 11518, but subsequently withdrew its protest, by letter dated October 29, 1947, conceding the right of the Vail Company, under the Santa Margarita v. Vail Judgment, to build and operate the dam proposed, and professing satisfaction as to the applicant's intention to abide by the attendant conditions imposed by the judgment. In view of its withdrawal, the applicant did not answer this protest. A like protest however, lodged against Application 11586 was adhered to and is discussed at length in a later paragraph.

Against Application 11586: (Fallbrook Public Utility District)

The Vail Company protests that the total runoff from the stream system is insufficient to supply the profitably irrigable riparian lands; that these waters have been adjudicated by court action; and that injury would result if passage of additional water to satisfy Application 11586 should now be required. It claims that its right to the use of water is based upon riparian ownership and upon court adjudication. It contends that it has diverted or that its predecessors in interest have diverted water from the Santa Margarita

stream system for more than 50 years, above the applicant's proposed diversion, to the extent of over 5000 acre feet annually, for the irrigation of over 3000 acres on Pauba, Temecula and Little Temecula Grants, and for domestic use.

The applicant replies that the protestant, whose property lies uppermost on the stream, is in a position to take and use all water to which entitled before it reaches the applicant's point of diversion, under which physical circumstances damage to protestant cannot result. The applicant asserts that the $2\frac{1}{2}$ cubic feet per second applied for is surplus to needs of all riparian owners on the stream.

The Santa Margarita Mutual Water Company protested Application 11586, claiming to have initiated a prior application proposing a diversion at approximately the same point. The applicant in answer asserts ownership of the site where diversion is proposed under Application 11586, and denies that this is the same location as designated by the protestant in his Application 11578. This protest was later withdrawn, by letter dated December 14, 1947.

The U. S. Navy, by the Commandant, Eleventh Naval District, protested Application 11586 because of apprehension that the proposed development would result in deprivation of water necessary for maintenance of government property, including the Marine Corps Base at Camp Pendleton, the Naval Ammunition Depot at Fallbrook, and the Navy's Santa Margarita Hospital. The right of the Navy to use water is claimed to be based on riparian ownership as well as upon the judgment in Rancho Santa Margarita v. Vail, which allotted Santa Margarita Ranch (to which the U. S. Government succeeded in interest) $\frac{2}{3}$ of the water of Santa Margarita River. The protest contained figures representing amounts of water withdrawn from wells located in the Santa Margarita River pump basin areas. These figures show for the four seasons last preceding 1946-47 the amounts pumped at Camp Pendleton for military purposes and the amounts pumped for the irrigation

of leased farming lands. For the four seasons reported these figures averaged 3421 acre-feet and 2083 acre-feet respectively; a total of 5460 acre-feet. The figures do not include withdrawals for the Naval Ammunition Depot nor for Fallbrook Public Utilities District, estimated at 100 and 146 acre-feet per year respectively. The protest remarks that the withdrawals reported are substantially less than the withdrawals required were the installations to operate at maximum capacity, when for military purposes, alone, seasonal consumption of upward of 10,000 acre feet appears probable. It is remarked further that in the long-time planning for Camp Pendleton it has been considered that the available water supply is limited to the surface flow of Santa Margarita River and to the storage within the pump basins. It is stated also that the long-term mean seasonal runoff from the entire watershed is approximately 33,000 acre-feet, most of which occurs during short periods resulting in wastage into the ocean. Hope is expressed that a way may be found to conserve this wastage, by studies now in progress.

HEARING HELD IN ACCORDANCE WITH THE WATER CODE

Applications 11518 and 11586 were completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested, were set for public hearing under the provisions of Article 13, Section 733a of the California Administrative Code on Tuesday, December 16, 1947, at 10:30 o'clock A. M. in Room 115, California State Building, Los Angeles, California. Of this hearing, the applicants and record protestants were duly notified.

GENERAL DISCUSSION

Santa Margarita River discharges into Pacific Ocean some 3 miles up the coast from Oceanside, San Diego County. With its tributaries it drains

upward of 740 square miles. Important tributaries are Deluz, Sandia and Murrieta Creeks, entering from the north at distances of about 12, 19 and 28 miles, respectively, upstream from its mouth; and Penjango Creek and Arroyo Seco, which enter from the south, at mile 29 and mile 35 respectively, again measured from the mouth of Santa Margarita River. Above the mouth of Murrieta Creek, Santa Margarita River is referred to as Temecula River. The stream system as a whole lies partly in San Diego County and partly in Riverside County.

Major Holdings: On the Temecula-Santa Margarita River, as this stream system is sometimes called, two individual land holdings predominate, in point of size. These are known as the Santa Margarita Ranch, 133,400 acres in extent, having a frontage of 17.5 miles on Pacific Ocean and extending easterly therefrom for about 15 miles; and the Vail Ranch of 79,177 acres, the western boundary of which lies about 10 miles easterly of the Santa Margarita Ranch. A lesser holding, that of the Estate of Murray Schloss is situated between the ranches mentioned. Title to the Santa Margarita Ranch passed to the United States in or about 1939, the property thereafter being devoted primarily to Naval training purposes, although agriculture including irrigation has continued where not in conflict with military activities. The principal naval installations are an extensive ammunition depot, and Camp Pendleton, a Marine Corps establishment which includes training facilities and an important Naval hospital. The population of Camp Pendleton, when operating at capacity, is reported as 57,000 persons.

Other sizable interests concerned with the use of Temecula-Santa Margarita water include the Fallbrook Public Utility District and the Santa Margarita Mutual Water Company. The former lies roughly opposite the mouth of Sandia Creek and includes within its boundaries the town of Fallbrook and

some 5000 acres of valuable agricultural land. The District derives its present water supply in part from Santa Margarita River and in part from San Luis Rey River, an important stream lying just to the south. The Santa Margarita Mutual Water Company has filed Applications 11578 and 12152, junior to the Vail Company applications but senior in one instance to the Fallbrook District's Application 11586. These applications contemplate diversions from Temecula-Santa Margarita River near the mouth of Sandia Creek and also near the head of Nigger Canyon, and utilization of the water so diverted for domestic purposes and irrigation within a service area adjacent to and interlacing the lands within the Fallbrook District boundaries.

Litigation: In the case of Rancho Santa Margarita v. Vail a judgment was entered adjudicating the water rights of the parties involved to the waters of the Temecula-Santa Margarita River and its tributaries and enjoining the defendants from interfering with the flow of that river except as expressly provided. The trial court determined that the Santa Margarita Rancho was reasonably entitled to $3/4$ of the flow of the main stream and the Vail Ranch $1/4$ and enjoined the latter from diverting larger quantities during the months of low flow. An appeal was taken to the State Supreme Court resulting in a reference for retrial in the lower court. In lieu of retrial the case was settled by a stipulated judgment, providing in brief that Rancho Santa Margarita and the Vail Ranch are entitled to take and use $2/3$ and $1/3$, respectively of the natural flow of Temecula-Santa Margarita River and certain tributaries; and that the Vail Company shall maintain in Santa Margarita River, just below the mouth of Murrieta Creek a constant flow of 3 cubic feet per second from May to October inclusive. The judgment names additional allowances (relatively small) to certain interveners (including the Murray Schloss estate)

and provides for the measurement and recording of flow at selected points, and for certain operational matters. The judgment is dated December 26, 1940. The judgment prescribes in some detail as to pumping underground stream flow but appears silent as to the impounding and subsequent utilization of flood waters.

Stream flow records of Temecula Creek at Nigger Canyon since January, 1923; Temecula Creek at Railroad Canyon, since January, 1923; Santa Margarita River near Fallbrook since November, 1924; and Santa Margarita River at Ysidora, since February, 1923, have been published in Water Supply Papers up to September 30, 1945. Similar data for 1946 and 1947 are available in the form of advance sheets. Certain figures have been abstracted from these records and rearranged in the following tables as a convenience in the study at hand.

TABLE I

DISCHARGE IN ACRE FEET AT STATIONS AND FOR PERIODS INDICATED

	Column 1	Column 2	Column 3	Column 4
	Santa Margarita River at Ysidora from October to September, Incl.	Temecula Creek at Nigger Canyon from November to April, Incl.	Santa Margarita River at Ysidora from November to April, Incl.	Temecula Creek at Railroad Canyon from November to April, Incl.
1924	2360	3967	2341	4524
25	790	2438	785	3311
26	15700	7540	15529	8133
27	91200	39222	90405	71740
28	4000	2519	3868	3693
29	1360	3522	1289	3687
30	Break	2902	Break	5353
31	3660	1399	3469	3496
32	40600	16063	40050	30105
33	6520	3117	5990	4449
34	5010	1288	4696	3116
35	12990	3264	11895	5090
36	11060	3283	10015	5451
37	117200	34282	114203	57480
38	122000	29037	118786	68230
39	22900	6341	21618	11100
40	22320	5265	21680	10945
41	117600	20668	109530	53601
42	16930	7783	15400	9561
43	74270	12095	73047	44298
44	27800	6333	27180	14809
45	20270	5709	19820	9640
46	11680	3827	11490	7548
47	7050	2266	7050	5041
Totals	755270	224130	730136	444401
Averages	32840	9339	31745	18517

TABLE II

DISCHARGES OF SANTA MARGARITA RIVER AT YSIDORA IN ACRE-FEET

DURING THE MONTHS OF MAY TO OCTOBER, INCLUSIVE, OF EACH YEAR

YEAR	MONTHS					TOTAL
	May	June	July	August	September	
1924	19.1					19
25	4.9					5
26	148.	22.6				171
27	430.	298.	43.0	3.1		774
28	107.	25.	0.2			133
29	67.	2.7				70
30						4
31	121	43.4	8.2	7.6	2.8	207
32	330	98.8	26.2	17.5	28.1	598
33	176	68.4	62.7	58.1	67.8	520
34	75.8	69.8	32.1	23.6	23.8	276
35	301	300	166	141	137	1181
36	261	247	194	110	94	1047
37	2130	671	28	24	0	2892
38	2680	510	30	0	0	3220
39	477	3.4	0	0	803	1582
40	342	-	-	-	-	342
41	6180	1710	156	5.2	0	8867
42	628	83	-	-	-	711
43	1060	166	-	-	-	1226
44	467	150	-	-	-	617
45	397	56	-	-	-	453
46	155	0	35	0	0	190
Total						25101
Average						1091

TABLE III

SANTA MARGARITA RIVER NEAR FALLBROOK, IN ACRE FEET, DURING THE MONTHS

OF MAY TO OCTOBER INCLUSIVE OF EACH SEASON

YEAR	MONTHS						TOTAL
	May	June	July	August	September	October	
1925	171	175	114	63	101	298	922
26	520	268	99	48	58	208	1201
27	726	428	164	86	201	446	2051
28	222	160	65	57	101	373	978
29	170	123	26	64	196	173	752
1930	1410	338	249	211	219	331	2758
31	323	194	83	101	165	296	1162
32	560	400	274	231	280	476	2221
33	487	266	176	172	243	308	1652
34	209	249	165	127	146	307	1203
35	419	241	155	152	176	268	1411
36	269	141	68	75	108	453	1114
37	1690	855	516	395	343	470	4269
38	1800	883	726	605	554	725	5293
39	824	542	457	382	1280	669	4154
1940	703	476	267	296	410	591	2743
41	4060	1420	780	744	668	1110	8782
42	859	642	443	376	432	524	3276
43	1020	705	479	374	388	617	3583
44	889	671	479	390	401	497	3327
45	696	499	316	496	464	495	2966
46	582	367	514	218	230	491	2402
47	480	459	335	275	349	-	1898
Total							60118
Average							2614

TABLE III A

SANTA MARGARITA RIVER NEAR FALLBROOK, IN ACRE FEET DURING THE MONTHS

OF NOVEMBER TO APRIL, INCLUSIVE, OF EACH SEASON

:Season:	:	:	:	:	:	:	:	:
:ending:	November	December	January	February	March	April	Total	:
: in	:	:	:	:	:	:	:	:
: 1925	: -	: 799	: 756	: 437	: 418	: 534	: 3034	:
: 26	: 452	: 608	: 513	: 1010	: 515	: 8150	: 11248	:
: 27	: 421	: 898	: 695	: 76600	: 3290	: 1400	: 83304	:
: 28	: 702	: 892	: 855	: 811	: 848	: 325	: 4433	:
: 29	: 512	: 707	: 818	: 700	: 664	: 472	: 3873	:
: 1930	: 158	: 279	: 2770	: 761	: 1640	: 470	: 6078	:
: 31	: 466	: 484	: 585	: 1420	: 402	: 364	: 3721	:
: 32	: 452	: 1680	: 953	: 28500	: 2560	: 750	: 34895	:
: 33	: 478	: 769	: 1830	: 828	: 652	: 567	: 5124	:
: 34	: 596	: 631	: 1030	: 713	: 555	: 341	: 3866	:
: 35	: 387	: 1030	: 1070	: 1590	: 1570	: 683	: 6330	:
: 36	: 383	: 453	: 507	: 3380	: 755	: 660	: 6138	:
: 37	: 401	: 4650	: 3890	: 32830	: 26430	: 5860	: 74061	:
: 38	: 607	: 889	: 930	: 2980	: 76820	: 3830	: 86056	:
: 39	: 758	: 2740	: 2290	: 5130	: 2300	: 1420	: 14638	:
: 1940	: 728	: 829	: 4740	: 4800	: 1200	: 1600	: 13897	:
: 41	: 685	: 6940	: 1380	: 10160	: 35770	: 19900	: 74835	:
: 42	: 1170	: 1850	: 2380	: 2120	: 2610	: 1770	: 11900	:
: 43	: 606	: 801	: 25610	: 8370	: 16010	: 3000	: 54397	:
: 44	: 670	: 1980	: 1410	: 9510	: 3590	: 1240	: 18400	:
: 45	: 3090	: 1020	: 1050	: 1520	: 4600	: 1310	: 12590	:
: 46	: 629	: 2980	: 865	: 899	: 2060	: 1310	: 8743	:
: 47	: 1510	: 1560	: 1040	: 803	: 785	: 609	: 6307	:
: Total	:	:	:	:	:	:	: 547868	:
: Average	:	:	:	:	:	:	: 23820	:

TABLE IV

RAINFALL AT LOS ANGELES AND AT SAN DIEGO, SINCE 1923, AS

ABSTRACTED FROM U. S. WEATHER BUREAU PUBLICATIONS.

Season (July to June Incl.)	Los Angeles	San Diego
1924	6.67	5.66
25	7.94	5.81
26	17.56	15.72
27	17.76	14.74
28	9.77	8.71
29	12.66	7.10
30	11.52	10.73
31	12.53	10.78
32	16.95	13.18
33	11.88	10.63
34	14.55	4.26
35	21.66	15.10
36	12.07	8.39
37	22.41	15.93
38	23.43	9.72
39	13.07	9.69
40	19.21	11.30
41	32.76	24.74
42	11.18	13.05
43	18.17	11.10
44	19.16	14.47
45	11.59	11.04
46	11.65	9.34
47	12.66	6.33
Total	368.81	267.52
Average for seasons listed	15.37	11.15
Published normal	15.23	10.30
Years of record	70	98

Column 1 of Table I, indicates that in the 23 seasons of record an average of 32840 acre-feet per season have passed Ysidora gage. Ysidora gage is situated about 2 miles above the mouth of Santa Margarita River. So far as the records disclose no water is diverted from Santa Margarita River below Ysidora gage, hence flowage past this point may be considered wastage into Pacific Ocean. This wastage would appear to serve, currently, no useful purpose and to be within the category of surplus, unappropriated water. This wastage has been far from uniform, having ranged from as little as 790 acre-feet in the season ending September 30, 1925, to 122,000 acre-feet in the season ending September 30, 1938. Rainfall, during the seasons for which streamflow records are quoted, averaged 101% of normal at Los Angeles, and 108% of normal at San Diego, according to the Weather Bureau data assembled in Table IV. A comparison of these stream flow and rainfall data suggests that had rainfall been normal during the period when stream flow was recorded, quantities passing Ysidora would have been less by some 13%.

Columns 2 and 3 of Table I show, respectively, discharges in Temecula Creek at Nigger Canyon and discharges of Santa Margarita at Ysidora, for the non-irrigation months only, i.e. for seasonal periods including the months from November to April inclusive, these being the months during which storage is proposed under Application 11513. Discharges are expressed in acre-feet. The data indicate that during these six-month periods discharges at Ysidora have ranged from 765 to 118786 acre-feet and have averaged 31745 acre-feet; and that discharges at Nigger Canyon have ranged from 1288 to 39222 acre-feet and have averaged 9339 acre-feet. It is also apparent that much greater quantities have wasted into the ocean than those measured at Nigger Canyon.

It does not necessarily follow that the 9339 acre foot average passing Nigger Canyon during the proposed period of storage is all surplus and available for appropriation; it is, rather, a ceiling figure which may require scaling down if vested rights downstream require any portion of it for their satisfaction. Such rights for irrigation may be dismissed from consideration, since irrigation is not practiced from November to April, inclusive; and the court requirement as to the maintenance of 3 cubic feet per second at gaging station No. 3 (below mouth of Murrieta Creek) applies likewise to the irrigating season only.

A substantial portion of the testimony at the hearing was directed toward the issue of whether or not the Fallbrook Public Utility District's Application 11586 is entitled to a preferred priority under the provisions of Section 1460 of the Water Code, and if so to what extent. While it would appear that Application 11586 is entitled to a priority over the Vail Application 11518 at least to the extent that water under the former may be used by the inhabitants of the District for domestic purposes, Fallbrook claims a preferred priority "for municipal use of the people of the District at present and in the future."

At the hearing the Vail Company attempted by cross-examination of Mr. Yackey, engineer for Fallbrook, to establish the amount of water which has been used for domestic purposes within the District during the past year. Apparently, however, the District has kept no separate records of its deliveries of water for various purposes, and all that could be obtained from Mr. Yackey was his estimate of domestic use within the District - about 1270 acre-feet per annum. This differed widely from the estimate of Mr. Sonderegger, engineer for the Vail Company, that 580 acre-feet per annum would be a liberal allowance for

domestic and municipal needs of a community of even 4,000 people. Mr. Yackey testified that when private wells within the district are pumping they supply about half the domestic demand. No evidence was produced at the hearing to indicate how much of the remaining domestic demand is supplied from the Santa Margarita River, how much from the San Luis Rey River, or how much will be supplied in the future from Colorado River water.

As a practical matter, it is doubtful if there ever will be a conflict between Applications 11518 and 11586. The Vail Company will be entitled to store water only during the period between November 1 and April 30, and Table III A indicates that there should always be ample water to supply Fallbrook and other prior rights below during the non-irrigating season. In view of this practical consideration, and the fact that there is no definite evidence in the record as to the amount of Santa Margarita water which Fallbrook will use for domestic purposes, the Division of Water Resources does not feel justified in attempting to determine the extent of the preferred priority of Application 11586, if any, at this time.

The requirements for domestic purposes at the Naval Installations (once Rancho Santa Margarita) may be considerably more than those of Fallbrook Utility District in view of the greater population: for 57,000 people (the figure named in the Navy protest) at 50 gallons per day domestic consumption could approach 1600 acre-feet per six month period. It does not necessarily follow, however, that these demands need be supplied from the watershed lying above the point of diversion proposed under Application 11518. Other branches of Temecula-Santa Margarita River enter the main stream above the diversion points of users other than the Vail Company. At the gaging station just below the mouth of Murrieta Creek (Temecula Creek at Railroad Canyon) total

discharges for the 6 month periods considered have ranged from 3116 to 71740 acre-feet and have averaged 18517 acre-feet. Column 4 of Table I contains figures relating to stream flow at this station, and it is apparent by comparison of corresponding figures that the November-April flow at Railroad Canyon has been roughly double that at Nigger Canyon and that the difference between the two is much more than enough to fulfill the domestic requirements, during the months stated, of the lower users. A surplus of water, therefore, appears to exist at the Vail Reservoir site, during the non-irrigating months, and its appropriation, as proposed in Application 11518, would not, insofar as can be seen, injure any downstream user. While approximately the full 40,000 acre-feet applied for would have been available in only one of the twenty-four seasons of record (1926-1927 season), a reduction in the amount of water applied for would not appear justified at this time.

The attitude of the Fallbrook Public Utility District with respect to Application 11518 of the Vail Company was expressed by that protestant's attorney, Mr. Lindley, during the course of the hearing, in the following language,

"The Fallbrook District primarily believes that all the water should be developed and put to beneficial use, just as much and as rapidly as it can be. We do not at the present time have the ability to go up and build a dam where this dam is proposed to be built, and we don't think that we should stand in the way of somebody else putting that water to a beneficial use. *** We propose to offer no evidence whatsoever in opposition to the present application of the Vail interests."

In connection with the same application, at the hearing, Mr. Lincoln, representing the Estate of Murray Schloss, stated,

"Well, our particular position, is that we stand in between. We have comparatively little to say about what happens to either party."

As to Application 11586 - to divert 2.5 cubic feet per second, year-round, for domestic, municipal and irrigation purposes, without storage, the questions as to whether a surplus, subject to appropriation, exists, and if so its extent and the practicability of its utilization, are narrower matters to determine. The amount applied for is equivalent to about 5 acre-feet per day or 900 acre-feet for a six month period. As to periods from November to April of each year, the discussion of the last preceding paragraph shows that streamflow at Railroad Canyon during such periods has exceeded streamflow at Nigger Canyon by an average of much more than 900 acre-feet per such period, which suggests that 2.5 cubic feet per second on average may remain in that reach of the river even should the entire flow at Nigger Canyon be impounded. Streamflow at Railroad Canyon actually exceeded streamflow at Nigger Canyon in all but 4 years of the 22 seasons considered. Wastage into Pacific Ocean, as indicated by the Ysidora gage, has exceeded discharge at Nigger Canyon by 900 acre-feet during the 6 month periods considered, for 18 of the 21 seasons for which records for these stations are at hand. It is thus apparent that on average a surplus exists from November 1 to April 30, which is not serving any useful purpose and is therefore subject to appropriation.

From May 1 to October 31, the availability of water for appropriation under Application 11586 is less apparent. Discharges at Ysidora, indicating wastage into the ocean from May to October, inclusive, have occurred as per Table II. These discharges during the 22 seasons for which complete figures are at hand have aggregated 25101 acre-feet or an average of 1091 acre-feet per year as compared to the 900 acre feet wanted. However in but 7 of these 22 seasons was runoff during the months in question 900 acre-feet or more, and in but 29 of the 132 months considered did discharge equal or exceed the

monthly draft of 150 acre-feet desired. The utilization of such erratic flow obviously depends upon diversion at a greater rate when surpluses occur, or upon supplementation from another source when surface flow is deficient. In this instance, the applicant has some storage capacity for Santa Margarita water, both surface and underground, and it has supplemental supplies available from the San Luis Rey River, from the Colorado River, and from wells within the District. Accordingly, it would appear that the applicant is in a position to utilize such varying surplus flows as occur during the summer and fall months.

It is set forth in the Navy protest that seasonal withdrawals from the Camp Pendleton Pump basins only, have averaged 5460 acre-feet for the four seasons ending with that of 1946. Other seasonal withdrawals during the same seasons are estimated by this protestant as averaging 100 plus 146, or 246 acre-feet per season. From the figures of Tables III and III A it is apparent that in most seasons of record substantially larger quantities than those just mentioned have passed the Fallbrook gage, if winter flow be included, as well as summer. The gravels along lower Santa Margarita River may be presumed to be charged by the winter surpluses of stream flow, to be replenished in part by such surpluses as occur during the summer months, and thus to equalize the supply which may be diverted by pumping. The existence of a surplus discharging into the ocean as reflected by the Ysidora records indicates that additional water may be abstracted as proposed under Application 11586 without injury to vested rights insofar as such rights have been perfected thusfar by application to beneficial use, provided that such abstraction does not result in lowering the water table dangerously. A considered statement by Captain Fogg at the hearing is to the effect that a lowering of the ground water level at Ysidora to anything less than 3 feet above mean sea level is likely to result in salt water intrusion into the basins. Surface flow of Santa Margarita

River reaching but not passing Ysidora gage tends to raise the ground water level of that vicinity. Surface flow passing Ysidora gage mostly wastes into the ocean and probably contributes negligibly toward maintenance of the ground water level.

In the Vail Company's answer to the protest on behalf of the Estate of Murray Schloss against Application 11518 it is contended that,

"*** The regulation effect of the proposed reservoir will cause even larger than the present flows during times of low water, and that flood control by impounding of peak flows will actually be of benefit to all lands below."

This contention appears logical, consequently it is probable that there will be additional flow available for Fallbrook Public Utility District after the Vail Company project is completed.

In view of the above circumstances we are of the opinion that surpluses, while to some extent intermittent, nevertheless frequently exist at the point on Santa Margarita River where diversion is proposed under Application 11586 and that the public interest and welfare will best be served if this application be approved. The utilization of such surpluses, up to the amount applied for, as a supplementation to supplies derived from other sources may greatly benefit this applicant, and it is not apparent that their diversion, if judiciously timed with respect to the requirements of vested rights downstream, will result in injury to any protestant.

SUMMARY AND CONCLUSIONS

There are at times unappropriated waters in the Temecula-Santa Margarita stream system at the locations at which the applicants propose to appropriate, which may be taken and used without injury to the protestants or other vested rights, and in view of the provisions of Section 100 of the

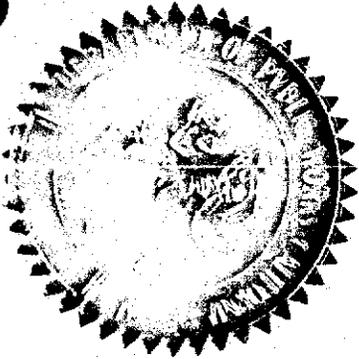
State Water Code, the applications should be approved.

ORDER

Applications 11518 and 11586 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that both Applications 11518 and 11586 be approved and that permits be issued to the applicants 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 16th day of February, 1948.




Edward Hyatt, State Engineer