

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
BEFORE THE STATE ENGINEER AND  
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 11645 of Agua Fria Mutual Service Company to  
Appropriate Water from Agua Fria Spring No. 2, Tributary to Lake Arrowhead in  
San Bernardino County for Domestic and Fire Protection Purposes.

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Decision A. 11645 D. 632

Decided November 9, 1949

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APPEARANCES AT HEARING HELD AT SAN BERNARDINO ON FEBRUARY 1, 1949:

For the Applicant

Aqua Fria Mutual Service Co.

(Surr & Hellyer  
(Attorneys at Law  
(by John Surr

For the Protestants

Los Angeles Turf Club, Inc.)  
Stoney L. and Jeanette L. De Ment)

(Guthrie, Lonergan & Jordan  
(Attorneys at Law  
(by Donald W. Jordan

California State Fish & Game Commission

Willis A. Evans and Otto Rolland

Appleton Land, Water & Power Co.

(Trent G. Anderson, Attorney  
(A. L. Sonderegger, Engineer

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of Water  
Resources, Department of Public Works, for EDWARD HYATT, State Engineer

Also present: J. J. Heacock, Associate Hydraulic Engineer, Division of Water  
Resources, Department of Public Works.

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## O P I N I O N

### General Description of the Proposed Development

Application 11645, filed December 4, 1946, contemplates the appropriation of 25,000 gallons per day, throughout the year, for domestic purposes and fire protection, from a spring designated as "Agua Fria Spring No. 2" and tributary to Lake Arrowhead, in San Bernardino County. The spring named as the source is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 20, T 2 N, R 3 W, SBR&M. The proposed place of use is a subdivision located within the same quarter quarter section. Of the subdivision it is said that there are 208 lots, 70 houses to be served, and approximately 490 people to be supplied during a week of maximum use. The water is to be pumped by a plant of 2500 gallons per hour capacity and delivered through some 9020 feet of 1 $\frac{1}{2}$  inch diameter pipe against a total head of 250 feet.

### Protests

The California State Fish and Game Commission protests that the proposed appropriation will result in the destruction of trout. It asserts that the amount of water sought is greater at times than the total flow of Blue Jay Creek, to which the spring is directly tributary, and that Blue Jay Creek is extensively used as a spawning stream by trout. It states that the protest may be disregarded and dismissed if the permit if issued contains a clause providing for the release at all times of 3 miners inches of water, or the combined natural flow of Springs No. 1 and No. 2, whichever is less, for the protection of fish life.

The Los Angeles Turf Club, Inc., Lake Arrowhead Division protests that diversion of waters tributary to Lake Arrowhead will have a devastating effect upon that lake, rendering it unfit for fishing, boating or scenic purposes. It claims a right to the use of all of the water from Agua Fria Spring No. 2, by virtue of a prior appropriation and contends that there is no unappropriated water in that spring.

Stoney L. and Jeannette L. De Ment protest that the proposed diversion will diminish the water available to them and which they obtain from Little Bear Creek and use, by virtue of riparian ownership and prior appropriation, for irrigation, fire protection and maintenance of an ice rink and angling pond. They describe their diversion point as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Sec. 20, T 2 N, R 3 W, SBB&M and state that their protest may be disregarded and dismissed if the applicant is limited to approximately the amount which it now uses.

Appleton Land, Water and Power Company protests that the proposed appropriation will operate to its injury by diminishing the amount of water reaching its diversion works on Deep Creek and by diminishing the amount of water available for charging underground areas of its lands which are riparian to Mojave River and comprise over 20,000 acres. This protestant claims a right to the use of water from the source in question on the basis of riparian ownership and actual diversion, through Hesperia Ditch, since 1911. It states that its lands lie within T 4 N, R 4 W, SBB&M and in the town of Hesperia, that water to the extent of 1500 miner's inches is used when available and that water is also obtained by recovery from wells.

In answer to the several protests the applicant denies that the proposed diversion will in any way affect or destroy trout, denies that water from the source filed upon is necessary to maintain Lake Arrowhead, denies that water is diverted or taken or used by the Turf Club, alleges that the water filed upon is unappropriated, alleges that after the proposed diversion sufficient water will remain flowing in Little Bear Creek to satisfy any existing rights of the protestants De Ment. The protest by Appleton Land, Water and Power Company was not formally answered.

Hearing Held in Accordance with the Water Code

Application 11645 was completed in accordance with the Water Code

and the Rules and Regulations of the Division of Water Resources, and being protested, was set for public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code on Tuesday, February 1, 1949, at 2:00 o'clock P.M. in Room 320, County Court House, San Bernardino, California. Of this hearing the applicant and protestants were duly notified.

#### General Discussion

At the hearing the applicant through its attorney authorized the reduction of the amount applied for in Application 11645 from 50,000 gallons per day to 25,000 gallons per day. Paragraph 2(a) of the application has been amended accordingly. At the hearing also the attorney representing the Protestants De Ment announced the withdrawal of that protest.

The testimony indicates that the development for which the water is wanted is not a new development and that water has been diverted for its supply at the rate specified in the application for several years last past, that water having been used since 1931 without opposition or objection, that reliance was originally placed on riparian rights but that it later appeared desirable to file with the Division of Water Resources, that of the two pumps now in use one was installed in 1936 and the other in 1938 or 1939, that the pumps do not operate at the same time, one serving as a standby to the other, that a storage tank was installed in 1946, that demand supplied with installed equipment has reached 25,000 gallons per day during peak periods and that no increased rate of draft is contemplated.

It is beyond the province of the Division of Water Resources at this time to determine whether the right claimed by Agua Fria Mutual Service Company to divert water as it has done heretofore is valid or invalid, and, so far as known, the claim of a right to so divert has not been challenged. The function of the Division in connection with the matter at issue is limited to a determination as to whether Application 11645 should be approved or disapproved. Inasmuch as the protests appear to be directed against an increase in the amount diverted by the applicant whereas no increase in that amount is contemplated in the premises, it is concluded that the approval of Application 11645 will not in fact injure any of the protestants. The protests by California State Fish and Game Commission, Los Angeles Turf Club, Inc., and Appleton Land, Water and Power Company against Application 11645 are therefore adjudged insufficient and are hereby dismissed. The application itself should be approved.

Summary and Conclusions

The water applied for under Application 11645 may be taken and used as proposed in that application without injury to lower users. The application should be approved, subject to the usual terms and conditions.

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ORDER

Application 11645 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 Application 11645 be approved and that a permit be issued 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 9th day of November, 1949.

  
Edward Hyatt, State Engineer

