

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 Matters of Application 10805 by Rancho De Anza to Appropriate Water from Coyote Creek and Application 11373 by A. A. Burnand, Jr., and Clara B. Burnand to Appropriate Water from Hell Hole Canyon, both in San Diego County and for Irrigation, Domestic and Recreational Purposes.

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Decision A. 10805, 11373 D. 692

Decided February 5, 1951

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APPEARANCES AT HEARING HELD AT SAN DIEGO ON AUGUST 1, 1950:

For the Applicants

Rancho De Anza)	
A. A. Burnand, Jr. and)	A. A. Burnand, Jr.
Clara B. Burnand)	

For the Protestants

Borrego Farms)	
Di Giorgio Fruit Corporation)	
Victor Ford Collins and)	Victor Ford Collins
Francis Richard Collins)	
Ensign Ranch)	No appearance

For an Interested Party

Division of Beaches and Parks,)	Edwin C. Kelton, Beach and
Department of Natural Resources)	Control Engineer

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works for A. D. EDMONSTON, State Engineer.

ALSO PRESENT - E. E. Blackie, J. A. Di Giorgio, Robert Di Girogio,
W. W. Palladine and W. L. Kenyon.

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OPINION

General Description of the Projects

Application 10805 initiates an appropriation of 27.4 cubic feet per second year-round from Coyote Creek, tributary to San Felipe Creek, in San Diego County. Of the amount sought 2.4 cubic feet per second are to be used for domestic and recreational purposes and 25.0 cubic feet per second for irrigation. The domestic supply is to head within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22 and the irrigation supply within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T 9 S, R 5 E, S.B.B.&M. Diversion is to be by gravity, masonry dams for that purpose being described in the application as 2 feet by 10 feet and 10 feet by 50 feet, respectively. The conduit system is to include a 10 inch pipe line 15,000 feet long for the domestic supply and a 22 inch pipe line 8,500 feet long for irrigation water. The place of use includes Sections 5 and 7 of T 10 S, R 6 E, S.B.B.&M. and portions of Sections 30 and 31 of T 9 S, R 6 E. It is proposed to irrigate 1000 acres, planted to general crops. Domestic use is to include the irrigation of numerous small gardens. The recreational use contemplated is the supply of swimming pools. Another water right is claimed for a portion of the place of use under Application 12-1493.

Application 11373 initiates an appropriation for irrigation, domestic and recreational purposes of 1.5 cubic feet per second, year-round from Hell Hole Canyon, tributary to Borrego Valley in San Diego County. The proposed diversion is to head at a point within the SE $\frac{1}{4}$ SW $\frac{1}{4}$

of Section 2, T 11 S, R 5 E, S.B.B.&M. Diversion is to be by gravity, the proposed diverting dam, a concrete structure, being 1 foot high and 18 feet long. The project includes a small regulatory tank or reservoir, dimensions unstated. The conduit is to be a 12 inch steel pipe line, 9500 feet long. The water is to be used within Section 1, T 11 S, R 5 E, S.B.B.&M. According to the application all of that section is to be irrigated but not more than 300 acres will be irrigated within any one year. Another water right or source of supply is claimed but particulars are not stated. Ultimate subdivision of some 300 acres into 5 acre residential tracts is contemplated in which event domestic use will include the watering of domestic gardens and the supply of swimming pools.

Protests

Borrego Farms protest both of the applications, claiming that their water supply under riparian rights and rights to underground waters derived from Coyote Creek and Hell Hole Canyon would be adversely affected by the proposed appropriations. They claim at present to be diverting by means of a 16 inch well which produces 1500 gallons per minute. They claim in effect that unappropriated surpluses do not exist and that any increase of diversions from streams tributary to Borrego Valley will rob the present water supply upon which Borrego Farms and other similarly situated properties are dependent.

The Di Giorgio Fruit Corporation protests both of the applications, representing that it irrigates substantial acreages in Borrego Valley, that its water supply is obtained from wells, that the wells are supplied by streams tributary to Borrego Valley, including Coyote

Creek and Hell Hole Canyon, and that any diversion from those streams as proposed in the applications will diminish its supply accordingly.

Victor Ford Collins and Frances Richards Collins also protest both of the applications, claiming rights as overlying owners to pump from wells on their property and arguing that the ground water that feeds such wells is in turn fed by Coyote Creek, Hell Hole Canyon and other streams that enter Borrego Valley. They assert that the diversions proposed in the applications would deplete the supply that is presently available to them. They state that there is one well on their property now and that they contemplate putting down additional wells with a view to its complete development. Their land, 290 acres in extent, lies within Section 26, T 10 S, R 6 E, S.B.B.&M.

The applicants answer the protests by stating that the protestants underestimate the average annual runoff from Coyote watershed, that of the total runoff some 25000 to 30,000 acre feet occur as flash floods which presently waste past the irrigable lands of Borrego Valley and are dissipated on the desert farther downstream. The remedy for this situation, Applicant Burnand asserts, is the construction of spreading works along the upper course of Coyote Creek. The applicant argues that the diversion works proposed under Application 10805 will serve to increase rather than to diminish the supply of percolating waters available to the protestants. It asserts that the possible lowering of a water table by an upper riparian's diversion for use on its own upper lands does not constitute proper grounds for protest. It contends that the protests are based upon possible future injury rather than upon interference with protestants' present use. With reference to Hell Hole

Canyon the applicants argue that the question of whether waters from that source flow underground to the protestants' lands is speculative and uncertain.

Hearing Held in Accordance with the Water Code

Applications 10805 and 11373 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 733(a) of the California Administrative Code on Tuesday, August 1, 1950, at 10:00 o'clock A.M. in the Supervisors' Hearing Room, San Diego, California. Of the hearing the applicants and the protestants were duly notified.

Motions

At the hearing of August 1 Attorney Collins, representing the protestants, moved (page 17 of transcript) for dismissal of Application 10805 on the ground that the application is not directed toward any water now in existence but toward water that might exist after certain check dams, not mentioned in the application, are built. Attorney Collins also moved for the dismissal of Application 11373 because in the first place the applicant lacks right of access to the proposed point of diversion; secondly because the application proposes the appropriation of surface waters whereas the Applicant Burnand's testimony is to the effect that it is the applicants' intention to divert waters from underground; and thirdly because no testimony has been introduced to show that there is any water to appropriate.

At the hearing also Mr. Burnand representing the applicants moved that the applications be extended as long as possible and consistent with regular practice so that a study can be made and a proper

distribution made of any surface water developed at a later date, the study to cover Coyote Creek, Palm Canyon and Hell Hole Canyon.

General Discussion

Application 12-1493, mentioned in Application 10805, was an application for a certificate of diligence under the provisions of Section 12 of the Water Commission Act. The certificate applied for was issued in the amount of 4 cubic feet per second on December 23, 1920. Inspections in connection with Application 12-1493 in 1919, 1921, 1928 and 1935 furnish first-hand even if limited information as to the flow of Coyote Creek at or near the points of diversion now proposed under Application 10805. According to filed reports of the inspections mentioned Coyote Creek was carrying 6.12 cubic feet per second on April 7, 1928, which amount, the investigator gathered from local inquiry, was about twice the normal summer flow; and on May 11, 1935 Coyote Creek was carrying 4.6 cubic feet per second. Extracts from the report of the latter investigation are as follows:

"All of the flow of the stream with the exception of about 2 miners inches was being diverted....."

* * * * *

"The ditch averages 3' wide on top, 1' wide on bottom and 1' deep the slope being .045."

* * * * *

"There is also a 40 acre-foot reservoirbut there has never been sufficient surplus to fill it."

* * * * *

"Apparently most of the stream flow has been diverted continuously for a great many years"

* * * * *

"....at the time of the visit Mr. Armstrongwas doubtful whether the gross diversion of 4.6 c.f.s. would be sufficient to cover all of the 40 acres he was then preparing"

From the reports it is concluded that Coyote Creek cannot be counted upon for a sustained summer flow in excess of the flow required to satisfy the appropriation under Application 12-1493.

The testimony of A. A. Burnand, Jr., on behalf of Rancho De Anza at the Hearing of August 1, 1950 corroborates the above conclusion. Extracts of Mr. Burnand's testimony relating to Application 10805 are as follows:

"....this filing was made for the express purpose of using additional waters that would arrive at these springs if and when check dams were put in the Collins Valley" (page 8 of Transcript).

* * * * *

".....all of the water that comes from these springshas been put to beneficial use on the De Anza Ranch, and the only other water that will be available under this filing is when these check dams are put inand these springs flow additional water....."
(page 14 of Transcript).

In answer to the Examiner's question "Is your project.....contingent upon the construction of these check dams?" Witness Burnand testified "There would be no water available." (page 14 of Transcript)

In view of the information gathered in connection with Application 12-1493 and the testimony quoted in the preceding paragraph it is evident that the natural flow of Coyote Creek is insufficient to satisfy Application 10805. The increased flow which the applicant anticipates will result from the building of check dams at points upstream and upon which dependence is really placed is not yet an actuality. The applicant does not propose to build check dams but merely to encourage their building by others. Whether and when the check dams will be built is too uncertain to warrant approval of an application to appropriate waters that may thereby be conserved.

With reference to motions at the hearing of August 1 it is the opinion of this office that the motion on behalf of the protestants for dismissal of Application 10805 on the ground that the application is not directed toward any water now in existence should be sustained, but that the motion to defer action upon the applications for additional study looking to a distribution of surface water yet to be developed is inconsistent with accepted principles and should therefore be denied.

As to Application 11373 the information at hand points to the existence of unappropriated water in Hell Hole Canyon which may be taken and used in the manner proposed without apparent injury to lower users. The gist of Applicant Burnand's testimony (pages 29 to 43 of Transcript) is to the effect that he proposes to divert from the subsurface rather than from the surface flow of Hell Hole Canyon, that he desires to utilize that particular source of supply in lieu of pumping from a well, in order to avoid pumping costs, that he interprets his observations to indicate that Hell Hole Canyon will yield up to 25 miner's inches, that for 10 out

of 12 years last past there has been surface flow in that channel and that in the remaining 2 years it may reasonably be inferred that a small amount was flowing underground. Consistently with his belief as to the recoverable yield of Hell Hole Canyon, Applicant Burnand requested (page 54 of Transcript) that the amount sought under Application 11373 be reduced to 0.5 cubic foot per second and the application has been so amended.

With reference also to Application 11373 protestants' witness Blackie, a consulting civil engineer, testified that he had investigated conditions relating to that application and that during his investigation he found a channel which evidently had carried water in the past but was dry at the time of his visit. He further stated, among other things, that in his opinion any water diverted from any tributary drainage will affect, to some extent, the underground supply in Borrego Valley. However in answer to the question ".....in your opinion what would be the relative effect of the applicant taking 25 inches of water from the underground in Hell Hole Canyon at the point of diversion proposed in Section 2 as compared with the effect of his pumping the same amount of water from the underground in Section 2?" The same witness replied,

"I dont think there would be any difference" (page 52 of Transcript).

Applicant Burnand, being asked thereupon if that were not his proposal, replied:

"That is it. In other words if we can't have it flow down then we will have to pump it up. One way it comes down by gravity without any cost and the other way it necessitates the drilling of a well....."

As to the motion for the dismissal of Application 11373, the Division of Beaches and Parks, which apparently owns the land upon which the proposed point of diversion and a portion of the proposed conduit are located, has not protested the application, negotiations for right of access appear to have been initiated, and the possibility of their failure is deemed insufficient cause for withholding approval of the application. Discrepancies between the application and the hearing testimony as to how the proposed diversion is to be effected - whether by surface dam or by buried pipe - likewise are an insufficient bar to the approval of an application. For the reasons stated the motion should not be sustained.

Summary and Conclusions

In view of the motion to dismiss Application 10805 on grounds that are well supported by the information at hand, that motion should be sustained and the application denied.

Despite the motion to dismiss Application 11373 it appears that unappropriated water at times exists in the source from which appropriation is sought under that application, and that such water may be taken and used in the manner proposed without injury to other users. The motion to dismiss Application 11373 should therefore be denied and the application approved, subject to the usual terms and conditions.

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ORDER

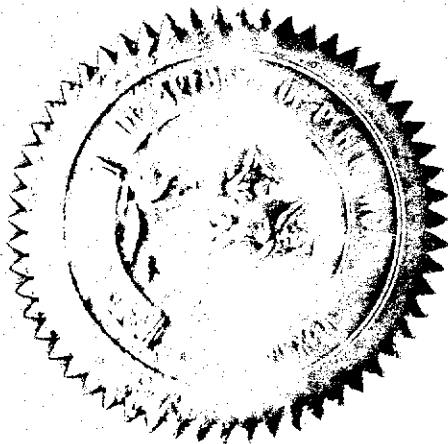
Applications 10805 and 11373 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the

State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 10805 be rejected and cancelled upon the records of the Division of Water Resources.

IT IS FURTHER ORDERED that Application 11373 be approved and that a permit be issued to the applicants thereunder, 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 5th day of February , 1951.



A. D. Edmonston

A. D. Edmonston
State Engineer.