

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

oOo

In the Matter of Application 13577 by A. F. Borel to Appropriate Water from the East Fork of Warm Springs Creek in Riverside County for Irrigation and Stockwatering Purposes.

oOo

Decision A. 13577 D. 700

Decided March 16, 1951

oOo

APPEARANCES AT HEARING HELD AT SAN DIEGO ON FEBRUARY 6, 1951:

For the Applicant

A. F. Borel

Charles H. Carter

For the Protestants

Department of the Navy

No appearance

Vail Company

No appearance

Fallbrook Public Utility
District

Phil D. Swing

Amos J. and Dovie M. Sykes

No appearance

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

oOo

O P I N I O N

General Description of the Project

The application initiates an appropriation of 100 acre feet per annum from the East Fork of Warm Springs Creek, tributary to Murrieta Creek, for irrigation and stockwatering purposes, in Riverside County.

The water is to be collected between October 1 and June 1 of each season and stored by means of an earth dam 26 feet high by 235 feet long. The dam is to create a reservoir 11 acres in extent and 85 acre-feet in capacity. The point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, T 7 S, R 2 W, S.B.B. & M. The project includes a 300 gallons-per-minute pump, 1500 lineal feet of 6 inch steel conduit and a portable sprinkler system. The place of use is to be a 60 acre pasture located within the SE SW $\frac{1}{4}$ of the same Section 6. Irrigation is to extend from about May 1 until about October 30. In addition to the appropriation currently sought the applicant claims a right to 0.3 cubic foot per second from springs and from a cienega nearby.

Protests

The United States Navy, represented by the Commandant, Eleventh Naval District, San Diego, protests that the diversion proposed by the applicant would deprive the pumping basins at Camp Joseph H. Pendleton Marine Barracks of much needed replenishment and curtail the water supply necessary for the maintenance of military installations at Camp Joseph H. Pendleton and at the Naval Ammunition Depot, Fallbrook, including the domestic supply at both of the installations named, which installations include a naval hospital and 902 family apartment units. The protestant claims a water right based upon riparian ownership, upon the stipulated judgment in the case of Rancho Santa Margarita vs. Vail by which the Federal Government is allegedly entitled to 66-2/3% of the water in Santa Margarita River and upon an appropriative right initiated by the filing of Application 12576. The protestant asserts that 5725 acre-feet of water have been used, on average, and that present and planned projects indicate a future need of some 12,500 acre-feet. It asserts further

that the water level in its pumping basin has reached such a low level that one well has been lost by salt water intrusion and the salinity of others has increased dangerously.

The Vail Company protests the application, contending that no unappropriated water exists anywhere within the Santa Margarita stream system and that the proposed diversion would decrease the supply now used on downstream riparian lands belonging to that protestant.

The Fallbrook Public Utility District claims an appropriative right under Application 11586, Permit 7033, to divert 2.5 cubic feet per second from Santa Margarita River. It claims also a prospective right initiated by the filing of Application 11587 to divert 10,000 acre-feet annually. It argues that if Application 11587 is approved in full or in substantial part there will be no unappropriated water left in the stream system above its point of diversion. It asserts that its total water supply is inadequate to meet its reasonable requirements in providing a municipal and domestic supply for the 5,000 acres within its boundaries.

Amos J. and Dovie M. Sykes protest that the applicant's proposed diversion would reduce the flow of Warm Springs Creek which supplies them with water for stockwatering and subirrigation. They assert that they have a deep well which produces 19 to 22 inches and another well which yields much less. They indicate that their property lies near the Warm Springs Creek bridge on Highway 395. Their protest, they state, may be disregarded and dismissed if the proposed diversion does not stop the natural flow through their land, or lower the water level thereon.

Answers

With reference to the Navy protest the applicant argues that the burden of proof that the proposed diversion would interfere with the Navy's pumping basins is on that protestant, and states that in his opinion the alleged interference cannot be proved. He argues further that the Santa Margarita vs. Vail judgment only affects the rights of parties to that action. He concedes the priority of the Navy's pending application over his own.

With reference to the Vail Company protest the applicant remarks that since riparian ownership does not apply to flood runoff there is no conflict between his application and the Vail Company's rights. He argues that the judgment in the Rancho Santa Margarita vs. Vail case bears upon riparian rights only and that it therefore does not affect his application which is limited to flood waters. He asserts that the Vail Company has no storage below his proposed dam, and holds no right competent to authorize the spreading of flood waters.

The applicant answers the Fallbrook Public Utility District protest by contending that no conflict in reality exists between Permit 7033 (Application 11586) and his own application, yet conceding the priority of the District's Application 11587 over his own and professing willingness to stipulate to that priority, if that application and his own are granted.

The Sykes' use of water, the applicant asserts, cannot be interfered with by the appropriation which he seeks, the former being a summer use, the latter an appropriation limited to a period when water is relatively plentiful. According to his belief, he states, the proposed taking of flood waters will in no way affect the subterranean

flow of the stream. He takes the position that the riparian right which these protestants claim does not extend to flood waters.

Hearing Held in Accordance with the Water Code

Application 13577 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 formal hearing under the provisions of Article 733(a) of the California Administrative Code on Tuesday, February 6, 1951, at 2:00 o'clock P.M. in the Supervisors' Hearing Chamber, San Diego, California. Of the hearing the applicant and the protestants were duly notified.

General Discussion

At the hearing of February 6, 1951 the only parties entering appearances were the applicant and the protestant Fallbrook Public Utility District. The United States Navy, the Vail Company and the protestants Sykes were unrepresented. At that hearing Attorney Swing, representing Fallbrook Public Utility District, volunteered the following statement,

"We stand of course on our protest but if the Division finds that the applicant has made out a case we ask that their permit be issued subject to our Permit No. 7033 and subject to our pending Application No. 11587 and any other applications which we have on file which are valid as of this date. With that we will not participate further in the hearing."

The hearing recessed briefly, then resumed and Attorney Carter, representing the applicant, stated,

"I submit the case subject to a right to reopen it in the event the application is denied."

Upon being reminded by the Examiner that a reopening of the case would have to be in the Superior Court, Attorney Carter replied,

"All right."

The hearing then adjourned without the introduction of testimony and without further remark by either of the parties present.

Salient facts abstracted from U.S.G.S. Water Supply Paper 1121, relating to tributaries of Santa Margarita River and/or to that stream itself, together with pertinent remarks, are as follows:

Gaging Station: Murrieta Creek at Temecula

Drainage area: 220 square miles

Length of record: 18 years

Average discharge: 13.0 second feet (0.0592 c.f.s./sq.mi.)

Remarks: 0.6 mile upstream from junction with Temecula Creek;
about 7 miles below the protestants Sykes and 11
miles below Applicant Borel.

Gaging Station: Temecula Creek near Temecula

Drainage area: 592 square miles

Length of record: 25 years

Average discharge: 28.2 second feet (0.0477 c.f.s./sq. mi.)

Remarks: 0.1 mile below junction with Murrieta Creek.

Gaging Station: Santa Margarita River near Fallbrook

Drainage area: 645 square miles

Length of record: 23 years

Average discharge: 36.7 second feet (0.0568 c.f.s./sq. mi.)

Remarks: roughly 10 miles below junction of Temecula and
Murrieta Creeks; below Fallbrook Public Utility
District's diversions, actual and proposed.

Gaging Station: Santa Margarita River at Ysidora
Drainage area: 740 square miles
Length of record: 20 years
Average Discharge: 44.6 second feet (0.0602 c.f.s./sq. mi.)
Remarks: 2 miles upstream from mouth.

The drainage area above the applicant's proposed point of diversion scales approximately 16.7 square miles. If that drainage area be assumed to produce at the same rate as the drainage area tributary to "Murrieta Creek at Temecula" or 0.0592 second foot per square mile, its total yield may be estimated to be 16.7×0.592 or approximately 1 cubic foot per second, equivalent roughly to 730 acre-feet per year. This is many times the 100 acre-feet per annum that the applicant seeks to appropriate.

The drainage area above the property of the protestants Sykes scales approximately 28.9 square miles. If that area also produces at the rate of 0.0592 second feet per square mile the amount reaching those protestants may be assumed to be 28.9×0.0592 or approximately 1.7 cubic foot per second, equivalent to some 1241 acre-feet per annum, an amount that is large in comparison with the protestants Sykes indicated needs or with the amount sought by the applicant. It is concluded that the objections by the protestants Sykes are an insufficient bar to the approval of Application 13577.

Diversions by the Vail Company under their claimed rights based upon riparian ownership and court decree cannot be affected, so far as can be seen, by the applicant's proposed appropriation of flood waters. That protest therefore is not considered a bar to the approval of Application 13577.

As to the protest by Fallbrook Public Utility District, Applications 11586 and 11587, held by that protestant are obviously prior to Application 13577 and must take precedence thereover. However, surpluses at times occur beyond the appropriation initiated under Application 11586 and an appreciable time may elapse before the storage project contemplated by Application 11587 is in operation, if the latter application is approved. It appears physically possible that Applicant Borel may benefit materially by the diversion which he proposes without infringing upon rights held by or in process of acquisition by the protestant district. Applications 11586 and 11587 therefore are not considered to be a bar to the approval of Application 13577. Consonant with the request on behalf of the protestant district at the hearing that in the event Application 13577 is approved a permit thereunder be issued subject to Permit 7033 (Application 11586) and to pending Application 11587, a clause of the nature requested should be inserted in such permit as may be issued, setting forth specifically that the permit is issued subject to such rights as may exist under Applications 11586 and 11587. In that connection other applications filed by Fallbrook Public Utility District within the Santa Margarita River system propose diversions from lower tributaries and therefore cannot be affected by the applicant's proposed diversion. However, for consistency, although such action was not requested, Application 12576 by the United States Navy to divert from Santa Margarita River should be covered in the same permit clause. The protestant Vail Company has filed no application on Santa Margarita River proper.

Summary and Conclusions

Unappropriated water at times exists in the source from which appropriation is sought under Application 13577. Such water may be taken

and used in the manner proposed in that application without infringement upon prior rights. It is the opinion of this office that Application 13577 should be approved, subject to the usual terms and conditions and subject also to a special provision specifically limiting diversions thereunder to diversions which shall not conflict with appropriations under Applications 11586, 11587 and 12576.

oOo

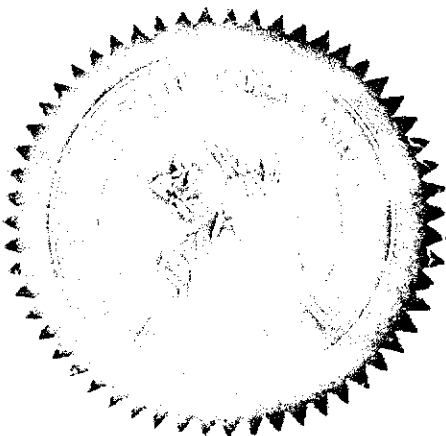
ORDER

Application 13577 for a permit 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 13577 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate and subject also to the following special term and condition to wit:

Issuance of this permit shall not operate to the prejudice of any prior rights, including rights acquired or to be acquired by the Fallbrook Public Utility District under Applications 11586 and 11587 and by the United States under Application 12576.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 16th day of March , 1951.



A. D. Edmonston
A. D. Edmonston
State Engineer