

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 13803 by Ellis Zahniser to Appropriate
Water from Pilgrim Creek Tributary to San Luis Rey River in San Diego
County for Irrigation Purposes.

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Decision A. 13803 D. 800

Decided September 7, 1954

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Appearances at Hearing Held at San Diego on January 25, 1954:

For the Applicant

Ellis Zahniser

Arthur F. H. Wright, Attorney at Law

For the Protestants

City of Oceanside

No appearance

Carlsbad Mutual Water Company

Charles Trygg, Secretary-Manager

Ellen D. Whelan

Phil D. Swing, Attorney at Law

EXAMINER - L. C. JOPSON, Principal Hydraulic Engineer, Division of
Water Resources, Department of Public Works, for A. D. EDMONSTON,
State Engineer.

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OPINION

General Description of the Project

The application initiates an appropriation of 3.00 cubic feet per second, year-round, from Pilgrim Creek, a tributary of San Luis Rey River, at a point within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, T10S R4W, SBB&M, for the irrigation of 1326.12 acres of general crops within Sections 22, 23, 26, 27, 28, 33 and 34 of T10S R4W, SBB&M. It is proposed to divert by gravity, the diversion dam being 2 feet high by 20 feet long and constructed of earth, rock and timber. The applicant asserts ownership both of the place of use and of the diversion site. He describes another available water supply as "wells and springs, 140 gallons per minute".

Protests

The City of Oceanside protests that the proposed appropriation will interfere with the normal flow of San Luis Rey River past, through or under lands that it owns, that San Luis Rey River is its source of water supply and that by lowering underground water levels the proposed appropriation will increase the cost of lifting water used for domestic, municipal and irrigation purposes within its limits, practically deny it any use at all of the flow of the river in normal or dry seasons and permit the intrusion of salt water from the ocean into lower Mission Basin.

Carlsbad Mutual Water Company protests that according to its information and belief the proposed appropriation will contribute to the depletion of surface and subsurface flow required to recharge the underground water bearing formation of the Mission Basin of San Luis Rey River, its principal source of irrigation and domestic supply.

Ellen D. Whelan protests the application, alleging in general that there is no flow in Pilgrim Creek in excess of the reasonable requirements of riparian owners and appropriators below the applicant on that stream and San Luis Rey River, alleging in particular that the diversion that the applicant proposes will substantially diminish the supply that is available to her and to which she has a legal right.

Answer

In answer to the protest by the City of Oceanside, the applicant denies the protestant's allegations and alleges that the natural terminal of Pilgrim Creek is Foss Lake, that no waters flow from Pilgrim Creek into San Luis Rey River except through a ditch which he (the applicant) constructed, that the City of Oceanside is presently diverting no water from San Luis Rey River at any point downstream from the point where the ditch from Foss Lake meets the river, that in only two years since 1915 has Foss Lake overflowed, that his present water supply is insufficient to cultivate the land which he owns.

In answer to the protest by Carlsbad Mutual Water Company, the applicant denies that the proposed appropriation will contribute to the

depletion of any flow required to recharge Mission Basin, asserts that his application relates only to foreign waters flowing through the bed of Pilgrim Creek.

In answer to the protest by Ellen D. Whelan, the applicant explains that his application relates not to the natural flow of Pilgrim Creek, but to foreign waters brought thereto by ditch from Camp Pendleton, denies that the proposed appropriation will diminish the flow in Pilgrim Creek to which Protestant Whelan has any legal right, denies that Protestant Whelan has any rights to use of water flowing in Pilgrim Creek, alleges that any water taken by Protestant Whelan since 1942 has been taken from the artificial ditch leading from Foss Lake to San Luis Rey River.

Hearing Held in Accordance with the Water Code

Application 13803 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 the California Administrative Code, Title 23, Waters, on Monday, January 25, 1954, at 2:00 o'clock p.m. in the Board of Supervisors Hearing Chamber, Civic Center Building, San Diego, California. Of the hearing the applicant and the protestants were duly notified.

Substance of Proceedings at Hearing

At the hearing of January 25, 1954, Attorney Wright, representing the applicant stated:

"Mr. Examiner, this matter comes on now with no foreign waters being discharged in Pilgrim Creek, and he believes that there are no unappropriated waters at this time, and from what he has been able to learn from the government engineers there is no possibility of effluent being discharged in that direction any more, or through the channel, and the government at the present time is in the process of clearing the ditch across Mr. Zahniser's land which has carried this effluent in the past. There has been an understanding that when that ditch is cleared that the government will abandon the easement which has been given to them for the carrying of the water across the land and at that time, of course, there would be direct evidence that there was no intent to discharge further effluent through Pilgrim Creek, and we have nothing that we can offer further than that at this time."

Attorney Wright also indicated it to be the applicant's wish that the matter of Application 13803 be continued until such time as definite notice has been received from the Navy ^{release of} of easement in its favor for carrying water across the Zahniser property.

Following Attorney Wright's remarks, Attorney Swing (representing Protestant Whelan) stated:

"I confirm what counsel for the applicant has said. I refer to the Federal Court case in which the State of California is a party, and will be glad to file a one page memorandum citing the pages of the official court transcript in which the government witnesses testified at the close of 1951 that they had completed their structures for the purpose of confining and retaining within the Santa Margarita watershed all of the water which heretofore, as effluent from their septic tanks, has been discharged into Pilgrim Creek, and the statement that it has been two years since that work was completed and two years since any effluent has been discharged into Pilgrim

Creek is correct and the suit pending involving the water rights of the government in which they were charged with exporting water out of the watershed, this rearrangement of their facilities was to meet that issue and the amount of money involved in making the change is all indicative that it is a permanent change. So there being no evidence offered by the applicant in support of his application, I think it is appropriate to move that the application be dismissed . . . So on behalf of Ellen D. Whelan I move that the application be dismissed for want of any evidence to show that there is any subject matter or water upon which the application can, at the present time or any foreseeable future, operate or become effective."

Mr. Trygg (representing Carlsbad Mutual Water Company) then stated:

"Carlsbad Mutual Water Company concurs in Mr. Swing's statement that it should be dismissed at this time."

The examiner ruled that action upon the motion would be deferred until review by the Department of the entire record, the parties to be notified in due course as to action taken.

Other Available Information

The report of an investigation made on July 23, 1952 in connection with Application 13803 by an engineer of the Division reads in part as follows:

"This investigation was made . . . to obtain information prior to setting a formal hearing . . ."

"Pilgrim Creek . . . is an intermittent stream rising on the low ridge between the San Luis Rey and Santa Margarita Rivers, and flowing in a generally west of south direction

to the San Luis Rey River. The watershed above the proposed point of diversion containing about 8,200 acres of rolling hills, having a sparse to medium covering of brush over the unimproved area. Approximately 1,000 acres have been improved by the Department of the Navy for officers and enlisted men's quarters for Camp Pendleton Marine Base.

"Average annual rainfall on the area is about 16 inches, and runoff is said to be rapid and flashy following storms. At the time of inspection the stream channel had numerous small pools of surface water, with a minor trickle of surface flow. Some underflow is indicated by a band of large willows that follows the thread of the stream from about the southerly boundary of the Naval Reservation, northerly for one mile."

"Water supply for the military installations is pumped from the Santa Margarita River, and sewage is collected at a treatment plant located approximately one mile northerly of the proposed point of diversion in the Pilgrim Creek watershed."

"The engineer at the plant estimated that about 90 per cent of the water pumped to the area passed through the treatment plant and at present the amount averages about one and one-quarter million gallons per day, varying from 900,000 to 1,500,000 gallons per day."

"Prior to July 21, 1952, the effluent from the plant was discharged into Pilgrim Creek above the applicant's proposed point of diversion."

"A permanent pumping plant and pipe line have been installed to pump the effluent back to the Santa Margarita River watershed. At the time of the inspection the plant was complete excepting the installation of transformers for the electric motor. A temporary diesel-powered centrifugal pump has been installed and was placed in operation on July 21, 1952, and operation is to be continuous."

The investigator summarized his above report as follows:

1. All effluent from the Camp Pendleton Pilgrim Creek sewage disposal plant is being pumped to the Santa Margarita River watershed.
2. The pumping is to be continuous.
3. Surface flow in Pilgrim Creek, above and below the sewage disposal plant was negligible."

An earlier filing to appropriate from Pilgrim Creek is Application 12893, Permit 8853, held by Adolph G. Sutro. Under that filing the point of diversion is located roughly 0.5 mile upstream from the point where Applicant Zahniser now seeks to appropriate. The Sutro project contemplates the diversion of 3 cubic feet per second, year-round, for irrigation of 272.15 acres of general crops, alfalfa and pasture in Sections 28 and 33 of T10S R4W, SBB&M. In progress report dated November 12, 1952, Permittee Sutro reported that use of water had commenced, 80 acres had been irrigated, irrigation had extended until July 23, 1952, use will be full and complete "as rapidly as water is available". In progress report dated November 7, 1953, that permittee reported, as to use made during the past 12 months, "none for the reason that current policy of the Navy is not to discharge effluent into Pilgrim Creek"; the permittee further reported that water would be used whenever available, that use would be full and complete "as soon as water is available". In a report of an investigation conducted by the Division in connection with Application 12893 on March 2, 1951, it is stated among other things:

"The Navy Department has commissioned ... consulting engineers to prepare plans for the reclamation of sewage from the Camp Pendleton sewage disposal plants."

"The plan includes reclaiming the effluent from the disposal plant in Camp Pendleton ... presently discharging into Pilgrim Creek ... and transporting it ... to the Santa Margarita watershed ... for irrigation"

"Under the plans none of the effluent will discharge to the San Luis Rey River"

"Flow in Pilgrim Creek ... above the point of discharge of effluent was approximately 0.75 cubic foot per second, following three days of rain. The plant operating engineer stated that flow in the creek was very intermittent and only followed periods of fairly heavy rainfall."

Summary and Conclusion

The available information points to the conclusion that the natural flow of Pilgrim Creek is fully utilized under rights that are prior to any that might be consummated under Application 13803, that the effluent from the Camp Pendleton sewage plant, formerly of the order of from 1.4 to 2.3 cubic feet per second, no longer discharges into Pilgrom Creek, and that if it should again discharge into Pilgrim Creek, it would probably be diverted and utilized under Application 12893 Permit 8853. In view of these circumstances it is the opinion of this office that unappropriated water is non-existent in Pilgrim Creek and that Application 13803 should therefore be denied.

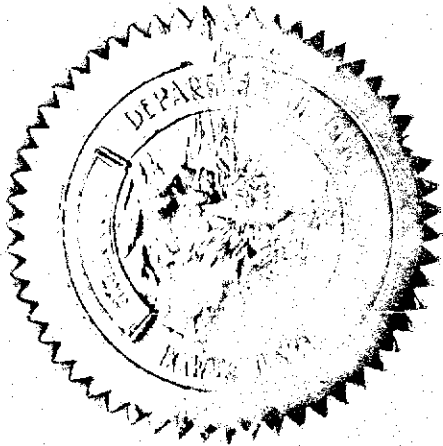
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ORDER

Application 13803 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a hearing having been held and the State Engineer now being duly informed in the premises:

IT IS HEREBY ORDERED that Application 13803 be rejected and canceled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 7th day of September, 1954.




A. D. Edmonston
State Engineer