

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 15827 by John S. Gay to Appropriate Water from South Fork San Pedro Creek, Tributary via San Pedro Creek to Pacific Ocean, in San Mateo County, for Domestic Purposes and Fish Culture.

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Decision A 15827 D 841

Decided November 3, 1955

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In Attendance at Investigation Conducted by the Division of Water Resources on May 5, 1955:

John S. Gay	Applicant
John J. Hopkins	Attorney, representing Protestants Maglio, Cafferata, Haggerty and the protestants Malavear
Gabriel Malavear	Protestant
Milton J. Cafferata	Protestant
Don S. Wilson Deputy County Engineer)) Representing County of) San Mateo
Ralph Shaw, Superintendent of Parks and Recreation))
Raymond H. Levy	Attorney, representing interested parties
Julian Cohn	Attorney
William Weiler	Interested party
A. Bernardi	Interested party
Murray Norton	Interested party

Herbert Frahm	Civil Engineer, representing Western Slope Land Corporation, an interested party
Mr. and Mrs. Silvio Del Rosso	Interested parties
John Castagnetto	Interested party
Robert L. Tilley, Engineer)	Representing North Coast County Water District, an interested party
H. F. Hill, Superintendent)	
K. L. Woodward	Representing the State Engineer
Senior Hydraulic Engineer	
and	
J. T. Blair	
Assistant Hydraulic Engineer)	
Division of Water Resources)	
Department of Public Works)	

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DECISION

General Description of the Project

The application initiates an appropriation of 2.25 cubic feet per second, year-round, from South Fork San Pedro Creek, tributary via San Pedro Creek to Pacific Ocean. The water is to be diverted at two points bearing respectively S 16° E - 1100 feet and S 50° E - 650 feet from the NW¼ corner of Section 24, T4S R6W, MDB&M. It is wanted for domestic purposes and for the maintenance of from 10 to 30 trout holding and raising ponds. The proposed works include two small diversion dams, one of lumber, the other of concrete, 1,500 lineal feet of 2-inch diameter pipe and 500 lineal feet of larger pipe, partly 8 inches, partly 12 inches in diameter. The applicant claims to own both the diversion sites and the proposed place of use.

Protests

John Maglio and Milton J. Cafferata protest that the appropriation that the applicant seeks would result in further depletion of their already insufficient water supply. They claim a right to divert the full flow of South Fork San Pedro Creek for 2½ hours per week under a 1921 court decree (Tobin v. Brown, et al., County of San Mateo, No. 4807). They state that their protest may be disregarded and dismissed if their rights are protected or if the applicant will provide them with an equal, substitute supply, free of charge.

Gabriel and Frances Malavear protest for the same reasons as those advanced by protestants Maglio and Cafferata, claim a right to divert the full flow of South Fork San Pedro Creek for 9½ hours per week based on the same court decree. They state that they irrigate artichokes and heather, year-round, that their protest may be disregarded and dismissed if the applicant will supply them free of charge with a supply sufficient for their needs.

The County of San Mateo protests that the proposed appropriation would result in a reduction of stream flow, that the County and adjacent properties would be left with insufficient supply. It mentions no terms under which the application may be disregarded and dismissed.

Alice M. Haggerty claims a riparian right, states that the applicant as lessee of the Haggerty property presently uses water for the operation and supply of a fish farm, that formerly water was used year-round on that property, that the applicant's proposed appropriation may render supply inadequate to meet protestant's present and future needs. She states that her protest may be disregarded and dismissed if flow is maintained in its present channel in the amount that she requires.

Answers

In answer to the Maglio and Cafferata protest, the applicant states that the water he seeks to appropriate is the same water that he has been using for the past four years; that that water is to be diverted on his property, run through trout ponds and returned to the river or discharged into a ditch above the protestants; that the only water that will be consumed will be the amount required for limited domestic purposes, that that amount is too small to affect the protestants, that in 1954 water ran into the ocean all year long.

In answer to the protest by the Malavears the applicant states that on September 15, 1954 he talked with Mr. Malavear who stated that he had misunderstood the application and would not object if water was to be used merely as the applicant had been using it for the four years last past.

In answer to the San Mateo County protest, the applicant states that according to the caretaker at the Sanchez Adobe property on September 15, 1954 the County was using North Coast County District water for the drinking fountain, for his (the caretaker's) house and for the public rest rooms; that it is not presently using water from the creek, that it is planned later to use creek water for irrigation. The applicant states further that since the water that he desires to divert, except a small amount for domestic purposes, will be returned to the creek a mile or more upstream from the Adobe property he cannot see that his project will injure the County in any way.

In answer to the Haggerty protest, the applicant states that when he moved into the Haggerty house in 1950 the pipe supplying the house was broken, that Mrs. Haggerty told him that for 10 or 15 years the house had been without a piped supply, that it was her practice to carry water by bucket from the creek. The applicant states further:

"I would be glad to furnish Mrs. Haggerty her 2/100 second feet either from the irrigation ditch on my land, or leave it in the creek to flow past her property."

"The 2.25 second feet that I have applied for can either be returned to the creek, or the irrigation ditch. I won't be using up the water, it will just go through my trout ponds and then back either into the creek or irrigation system, whichever is desired by the downstream water users. At the present time, and for the past 4 years, I have been running the entire stream through my trout ponds on land adjacent to my property in this application without any complaints from anybody."

"The amount of water left in the stream over Mrs. Haggerty's 2/100 second foot is determined by the downstream water rights and whether they want their water in the creek, or in the irrigation system -- I, or my application has nothing to do with that."

Field Investigation

The applicant and the protestants with the approval of the Division having stipulated to the submittal of the application and protests upon the official records of the Division, a field investigation was conducted by engineers of the Division on May 5, 1955. That investigation was supplemented by further field investigation on May 18 and 19, 1955. During the initial field investigation the applicant and the protestants were present or represented.

Records Relied upon

Applications 15827, 16162 and 16379 and all information on file therewith; Montara Mountain Quadrangle, United States Geological Survey; Bulletin No. 5 - "Flow in California Streams" - Department of Public Works, Division of Engineering and Irrigation, 1923.

Information Secured by Field Investigation

Information contained in the report covering the field investigation of May 5, 18 and 19, 1955 is in substance as follows:

South Fork San Pedro Creek heads in Section 24, T4S R6W , MDB&M, at an elevation of about 1,300 feet, flows northerly about 1 mile to a junction with Middle Fork San Pedro Creek, thence northwesterly about 2.5 miles to Pacific Ocean near the town of Pedro Valley. San Pedro Creek below elevation 200 passes through a narrow, flat, fertile valley which prior to 1954 was highly developed agriculturally, the principal crop being artichokes. Most of the valley has now been taken out of cultivation by the construction of Linda Mar subdivision which may eventually contain several thousand homes. According to local residents, most of the summer flow originates in the South Fork. On May 5, 1955 the investigator estimated the flow of South Fork San Pedro Creek at the applicant's proposed point of diversion to be about 1.0 cubic foot per second and the flow of San Pedro Creek below the entrance of the North Fork to be about 2.3 cubic feet per second. The North Fork joins the main stream about 1 mile below the junction of the South and Middle Forks. During the supplementary investigation of May 18 and 19, 1955 the flow of the North Fork was estimated to be 20 gallons per minute, the flow of San Pedro Creek below the point of entrance of the South Fork 2.0 cubic feet per second, the flow of San Pedro Creek below Highway No. 1 (1/8 mile above mouth of creek) between 1.5 and 2 cubic feet per second.

The applicant's commercial fishing project is presently located on land leased from Protestant Haggerty. Upon

expiration of the lease next November, operations are to shift to a small tract east of the Haggerty property. The application is to cover the project at the new site. Under present and future operations, the applicant's use of water for fish is nonconsumptive and the water is immediately available to the next lower user. Reportedly the Department of Fish and Game presently allows the applicant to dispose of about 35,000 fish of catchable size each year. The fish are obtained as fingerlings and raised to the desired size in the holding and rearing ponds; periodically quantities of grown fish are transferred to the fishing ponds as the supply in the latter is reduced by the fishing public. The amount sought for fish culture, according to the applicant, was determined on the basis of the proposed diversion system. The applicant states that while the flow during late spring, summer and fall months is normally less than the amount applied for, the project can operate successfully on the amount available. He states further that during higher stages he can beneficially use the full amount requested. He states that while domestic use will be consumptive, there will be no increase in such use over what it has been in the past and that as his past operation has not been adverse to downstream users, he anticipates no interference in future. He is disposed, if necessary, to accept a permit allowing domestic use only during such times as water is wasting into Pacific Ocean.

Between the applicant's projected development and Pacific Ocean all lands served with water from San Pedro Creek or tributaries lie within the area considered in the San Pedro Creek adjudication. Uses are being made currently along San Pedro Creek as follows:

Haggerty - 15 acres of artichokes irrigated by gravity from South Fork San Pedro Creek. The Haggerty property is presently under option to Western Slope Development Company and will be taken out of cultivation if the option is exercised.

Castagnetto - About 16 acres of vegetables irrigated and 400 hogs watered from San Pedro Creek by pumping.

Maglio and Cafferata - 4 acres of nursery stock irrigated by pumping from San Pedro Creek.

Malavear - 12 acres of heather irrigated and 2 houses supplied by pumping from San Pedro Creek.

Pillar of Fire Church - 10 acres of artichokes and other vegetables irrigated by pumping from San Pedro Creek.

County of San Mateo (Sanchez Adobe) - Domestic water obtained from North Coast County Water District. The County claims that "recreational uses at this historical monument require a flowing stream past the property".

Del Rosso - 23 acres of artichokes irrigated by pumping from San Pedro Creek.

Magrin - 10 acres of artichokes irrigated and cattle watered directly from San Pedro Creek. A supplemental supply is obtained from a well, said to yield 200 gallons per minute.

Bernardi - about 8 acres of artichokes irrigated from North Fork San Pedro Creek.

Russi - 2 acres of artichokes irrigated and several sheep watered from North Fork San Pedro Creek.

Bernardi and Russi also claim rights to divert from South Fork through a flume that was recently destroyed, a matter presently in litigation.

At the conclusion of the investigation of May 5, 1955 Attorney Hopkins advised that on the understanding that the applicant's project would operate substantially as it has in the past his clients would probably withdraw their protests. Mr. Wilson contended that a flowing stream at Sanchez Adobe is of great recreational value, enhances the value of the County property and is a beneficial use.

Information from Division Files

Other applications to appropriate at points within San Pedro Creek watershed are:

Application 16162, by Western Slope Land Corporation, to appropriate 2 cubic feet per second, year-round, and 200 acre-feet per annum collected between November 1 and May 1 of each season, from South Fork San Pedro Creek at a point bearing S 16° E -

1100 feet from NW corner of Section 24, T4S R6W, MDB&M (coincident with one of the points of diversion proposed in Application 15827), the water to be used for domestic purposes (household and garden use) on some 1500 eighthacre lots within projected Sections 11, 12, 13, 14 and 23 of T4S R6W, MDB&M; and Application 16379 by North Coast County Water District, to appropriate 1 cubic foot per second, year-round, and 1200 acre-feet per annum, collected between September 1 and June 1 of each season, from the South Fork San Pedro Creek, at a point approximately 2000 feet north of the west quarter corner of Section 24, T4S R6W, MDB&M, the water to be used at Linda Mar Subdivision, described in the application as a "strictly residential community with 5,000 to 10,000 population". Linda Mar Subdivision lies along San Pedro Creek, apparently including most of San Pedro Valley and some adjacent hill land.

Applications 16162 and 16379 are not yet complete.

Rights to the full flow of San Pedro Creek during irrigation seasons were defined in Decree No. 4807, Superior Court, County of San Mateo, in the matter of Mary A. Tobin v. Henry Ward Brown et al. The matter was referred to the State Water Commission as referee and was concluded by court judgment dated May 5, 1921. Under the decree 0.04 cubic foot per second was to be allowed to flow down the channel of South Fork San Pedro Creek, past the intake of the then existing

irrigation system, for the benefit of certain lands (Cryan and Rooney), and all remaining flow of said South Fork was to be allowed to be diverted into a certain flume (on Cryan property) for use by designated parties, in accordance with a prescribed time schedule. The decree also contains certain provisions as to diversions from other tributaries of San Pedro Creek and it contains the following passage:

"It is understood and agreed that the waters herein referred to are such as flow in said San Pedro Creek and its tributaries, during the irrigation seasons. Nothing herein shall prevent the lawful appropriation of any waters flowing in any of said streams and not being put to beneficial use."

The watershed tributary to Applicant Gay's proposed points of diversion appears from Montara Mountain Quadrangle to be about 1.4 square miles in extent. Comparison with the watershed tributary to the group of streams termed the Pescadero Creek Group in Bulletin No. 5 - Flow in California Streams - suggests that the runoff from the watershed tributary to the applicant's proposed points of diversion may be of the order, very roughly, of 1.4 x 853 or 1194 acre-feet per annum, an amount equivalent volumetrically to a steady flow of some 1.65 cubic feet per second.

Discussion

The amount sought by the applicant probably exceeds somewhat the average yield of the watershed tributary to the applicant's proposed points of diversion.

Unappropriated water appears currently to exist. While the full flow of San Pedro Creek has been allocated to individual users by court order, rights thereunder are not exercised fully and excesses at times pass unused to the sea.

The applicant's needs for domestic purposes for the "one house, 4 people, 1/2-acre garden, 1 horse, 2 goats, 50 people per day at fishing ponds," listed in the application may aggregate up to about 5,000 gallons per day. The applicant's proposed use for fish culture is nonconsumptive and therefore cannot interfere with the exercise of downstream rights. In view of these circumstances the reasons advanced in the protests by the irrigators Maglio, Cafferata, Malavear and Haggerty and in the protest by the County of San Mateo are insufficient to bar the approval of Application 15827, provided diversions for domestic purposes under any permit that may be issued to the applicant are restricted to times when the surface flow of San Pedro Creek is reaching Pacific Ocean.

Despite however the noninterference of the applicant's proposed use of water with downstream diversions (if consumptive use by applicant is restricted as above mentioned) an otherwise unconditional approval of Application 15827 might preclude the consummation of any future appropriation upstream. San Pedro Valley and nearby hills are undergoing urbanization and it may be supposed that such trend will continue. Urbanization will

be accompanied by increased demand for water for domestic use and it may be expedient that a supply for such use -- the highest use under the Water Code to which water may be applied -- be obtained from South Fork San Pedro Creek. Applications 16162 and 16379 have in fact already been filed for the express purpose of supplying present and expected population, the points of diversion proposed thereunder being on South Fork San Pedro Creek, at, near or above the points of diversion proposed in Application 15827. The blocking of a project or projects to utilize a water supply for domestic or irrigation purposes by the approval of an application to appropriate for fish culture is clearly at variance with the public interest. Such blocking may be prevented by the inclusion in such permit as may be issued to the applicant of a provision to the effect that diversions under the permit for fish culture shall be limited to diversions which will not interfere with diversions in future for domestic or irrigation purposes from the same source.

Conclusion

The circumstances indicate that unappropriated water exists currently in the source from which appropriation is sought under Application 15827, that such water may be taken currently and used beneficially in the manner proposed by the applicant without infringement upon the rights of downstream users but that as urbanization of San Pedro Valley and vicinity

proceeds the recoverable yield of that source may be required in part if not wholly for purposes higher than fish culture. It is the opinion of this office therefore that Application 15827 should be approved and permit issued, subject to the usual terms and conditions but subject also to special terms and conditions limiting diversions thereunder for domestic purposes to times when the surface flow of San Pedro Creek reaches the ocean and providing that diversions under the permit for fish culture shall not interfere with diversions under future appropriations for domestic and/or irrigation purposes.

ORDER

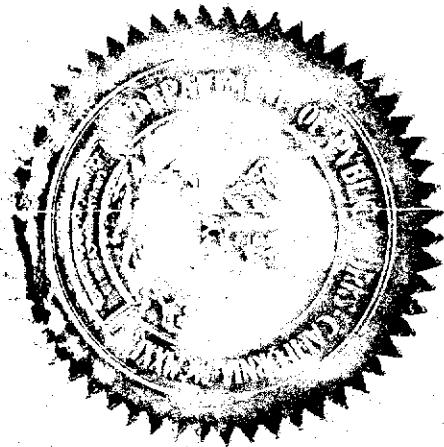
Application 15827 having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15827 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 terms and conditions, to wit:

Diversions for domestic purposes under this permit may be made only at such times as surface flow of San Pedro Creek is reaching Pacific Ocean.

The right to divert water for fish culture under this permit shall not interfere with future appropriations of said water for domestic or irrigation purposes.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 3rd day of November 1955.



A handwritten signature in dark ink, appearing to read "Harvey G. Banks", written over a horizontal line.

Harvey G. Banks
Acting State Engineer