

BEFORE THE DIVISION OF WATER RIGHTS  
DEPARTMENT OF PUBLIC WORKS  
STATE OF CALIFORNIA

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In the Matter of Application Number 3657 of Peter L. and Lillian J. Swanson and Application Number 3907 of David Dalzell to  
Appropriate from the San Benito River in San Benito  
County for Agricultural Purposes

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DECISION NO. 3657 - 3907 D 107

Decided May 25, 1926

APPEARANCES AT HEARING HELD February 13, 1926, and continued to  
March 29, 1926.

For Applicants:

Peter L. and Lillian J. Swanson  
David Dalzell

Geo. W. Jean  
A. W. Funnels

For Protestants:

T. F. and W. K. Brown  
San Benito Land & Water Co.  
Lilla B. Renshaw  
Geo. E. Sikes

Thos. L. O'Donnell  
Thos. F. O'Donnell  
Thos. E. O'Donnell  
in propria persona

Examiner: Everett H. Bryan, Deputy Chief of Division of Water Rights

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OPINION

Application Number 3657 was filed on October 2, 1923. It proposes an appropriation of 1.4 cubic feet per second of direct diversion from October 1st to June 1st of the following year for agricultural purposes. It was protested by the San Benito Land and Water Company, T. F. and W. K. Brown and Lilla B. Renshaw.

Application Number 3907 was filed on March 18, 1924. As presented at the hearing it proposed an appropriation of 0.45 cubic feet per second of direct diversion from February 1st to December 31st of each year for agri-

cultural purposes but on the first day of the hearing the applicant requested that the period of proposed diversion be limited to the period from March 1st to May 31st and from November 1st to December 31st of each year and it has been so amended. The application was protested by the San Benito Land and Water Company and P. F. and W. K. Brown.

These several applications were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and being protested were set for a public hearing at the Court room of the Court House, Hollister, at 10:00 o'clock a.m. on February 13, 1926, and re-convened and continued at the same place at 10:00 o'clock a.m. March 29, 1926. Of this hearing applicants and protestants were duly notified.

The San Benito Land and Water Company protested both applications. It based its claim on prior appropriation uses and grants and alleged in effect that practically all of the waters which the applicants sought to appropriate belonged to the Company, that nearly all of the waters which flow in the stream during the irrigation season past the applicant's proposed points of diversion are flood waters which have been stored and developed by the Company and used in Hollister Valley and vicinity for irrigation purposes and that it uses all or nearly all the water in the river except during flood periods when the water is not fit for irrigation purposes on account of the silt which it contains.

P. F. and W. K. Brown also protested both applications, basing their claim to the waters of the San Benito River on riparian rights and beneficial past use and allege in effect that the amount of water sought by the applicants is more than the amount which naturally flows in the river during the periods of the proposed diversion and that if the applications

were approved there would be no water of the natural flow remaining in the stream below the points of the proposed diversions.

The protest of Mrs. Lilla E. Renshaw is directed against Application Number 3657 only. Mrs. Renshaw claims prior use and riparian rights and alleges in effect that the amount of water sought by the applicant is more than the amount which naturally flows in the river from May 1st to November 15th of each year and that if the application were approved there would be no water of the natural flow left in the stream below the point of diversion named in the application during this period, that for some time the applicants have been diverting all or practically all of the waters of the stream and by so doing have deprived the other users below them of sufficient water for irrigation purposes and that the applicants have been using water when it has not been necessary for them to do so.

Although there was an appearance made by Mr. Sikes in propria persona he was actually represented by Mr. O'Donnell, attorney for the other protestants.

The San Benito River rises in the mountains in the southern portion of San Benito County and flows in a general northwesterly direction to a point about eight miles northwesterly of the town of Hollister where it unites with the Pajaro River and flows westerly to the Pacific Ocean. It has two main tributaries, Tres Pinos Creek which joins the San Benito River about five miles southeasterly from Hollister and Pescadero Creek which unites with the San Benito River at a point about 12 miles south easterly from Hollister. The discharge of the San Benito River both seasonal and yearly is very erratic and no continuous records are available from which to determine the mean annual runoff.



In his report on the Hollister Irrigation District in 1925 Mr. A. H. Burch at that time engineer for the district estimated the yield of the watershed from precipitation records availing himself of runoff and rainfall data as applied to other records and has used methods in computing the stream flow adopted by the State Division of Engineering and Irrigation as set forth in its Bulletin No. 5.

From these studies Mr. Burch's conclusion is that the mean seasonal runoff of the San Benito River at the mouth of Bird Creek, about one-half mile below the junction of Tres Pinos Creek and the San Benito River is 126,300 acre feet, varying from a minimum of 5,700 acre feet to a maximum of 428,280 acre feet. This runoff is from an area of 582 square miles.

While estimates of runoff thus obtained are not as satisfactory as those obtained from actual measured discharges the estimates probably indicate within reasonable limits the actual yield of the watershed.

About  $3\frac{1}{2}$  miles above the junction of the San Benito River and Pescadero Creek, the San Benito Land and Water Company has constructed a diversion dam by means of which the flood waters of the San Benito River are diverted into a canal and conveyed to the Paicines Reservoir which is located about midway between the San Benito River and its tributary Tres Pinos Creek about a mile north of the junction of Pescadero Creek and the San Benito River. According to testimony presented at the hearing this reservoir has a capacity of about 4000 acre feet above the surface of the ground and about 7000 acre feet in the gravels below. The surface storage is re-diverted from this reservoir by means of a tunnel and canal and returned at a point above the applicants points of diversion and about 2 or 3 miles below the junction of the San Benito River and Pescadero Creek whence it flows down the San Benito River and together with the natural flow of the river is again re-

diverted into a canal of about 80 second feet capacity by means of a concrete dam and sand and gravel levee located about  $3\frac{1}{2}$  or 4 miles southeast of the town of Hollister.

The 186 acres of land which Peter L. and Lillian J. Swanson propose to irrigate under Application Number 3657 are a portion of a tract of general farming land purchased by them in 1912 containing approximately 1100 acres. In 1914, 35 acres of apricots were planted and from time to time additional acreage was put into orchard until at the present time there are about 120 acres in prunes, apricots and walnuts, this orchard being included in the area which it is proposed to irrigate under the application. This tract of land lies immediately adjacent to and on the east side of the San Benito River about eight miles southeasterly from the town of Hollister. The orchard has in the past been irrigated with the waters pumped from the San Benito River under claim of riparian rights, the use being highly beneficial. The land slopes toward the river and therefore there would be a natural seepage from the land back into the stream.

The application was filed presumably with the intent to establish the claim of riparian rights on the stream but the applicants were informed by this office that there was no provision in the law whereby an application could be made with the Division for placing on record a claim of riparian or vested rights except through court reference as provided for under Sections 24 to 36 of the Water Commission Act and that this office could consider the application as for unappropriated water only and if approved it would have no relation to the riparian right claimed.

The 36 acres of land which it is proposed to irrigate under Application Number 3907 of David Dalsell is the irrigable portion of a tract of 360 acres owned by him since 1911 and lies adjacent to and easterly of the San Benito River about  $6\frac{1}{2}$  miles southeasterly from the town of Hollister.

The 36 acres have been planted to prunes and apricots and have been irrigated consecutively for the last 27 years under a claim of riparian rights.

The lands of the protestant Reashaw lie about 500 or 600 feet above the Daisell place which explains why Application Number 3687 only was protested.

The testimony presented at the hearing regarding the flow in the river and the use made of that flow during a normal year was very conflicting.

Mr. Swanson testified that between the months of October to May inclusive of a normal year there is plenty of water in the river to satisfy all appropriators, that at times the flood waters are very abundant, that water flows past his point of diversion which is not entirely used by the protestants, that no injury would result to anyone if he diverted the amount applied for and that any complaints which had been made of his use of water under his riparian right had been made during seasons of subnormal runoff. He stated that none of the water which the San Benito Land and Water Company had stored and returned to the river above his point of diversion had been diverted for the reason that in a normal year there had been plenty of water in the river before that water had been returned to the river.

Testimony presented at the hearing by Mr. and Mrs. Swanson, Mr. Feldman, Mr. Daisell, Mr. Thomas and Mr. Centmeyer was to the effect that the proposed diversion by the applicant during a season of normal runoff would have no adverse effect upon the protestants use of water. Mr. Centmeyer testified that it would be impossible for the San Benito Land and Water Company to divert all the water available at their lower point of diversion even if they so desired up to the latter part of April in a normal season and that water passed beyond their intake during such a season.

Testimony was also introduced which would appear to indicate that when the flow past Swanson's point of diversion is 2000 gallons per minute the entire amount sinks in the gravels of the river bottom near the junction



of Tres Pinos Creek and San Benito River and none would reach the diversion point of the protestant company even though allowed to pass unmolested by Swanson and Dalzell.

In opposition to the testimony presented by witnesses as to there being unappropriated water in the stream Mr. P. F. Brown president and general manager of the San Benito Land and Water Company testified that practically no water passes the lower diversion dam during the irrigation season and that the operation of the pumps on the stream interferes with the Company's diversion and denies that there is any surplus water in the stream except when it rains.

Mr. Brown testified that the Company was diverting water under an old right initiated in 1889 by the posting of a notice by E. F. Gould and A. M. Hardin. This right was for fifty thousand inches measured under a four inch pressure (1000 cubic feet per second) and that since this right was initiated the Company and its predecessors in interest had used all of the water in the river for the irrigation of lands in the Hollister Valley except at flood times with the exception of one or two occasions when the ditch had to be repaired, that there were 5,000 acres covered by the system but that this acreage had never been irrigated at one time owing to the deficiency in the supply.

There was also conflicting testimony presented at the hearing relative to the lower diversion works of the San Benito Land and Water Company and in order to obtain a correct idea as to the nature of the works the examiner personally inspected the same after the hearing.

It was found that at the point of diversion the stream divides into two main channels. Across the east channel there is a concrete dam which according to the Company is set upon a clay foundation. Across the other channel which is lower than the bottom of the canal there has been a sand and gravel levee thrown up which in reality forms one of the banks of the diverting canal.

The earth had been washed away on the north end of the concrete dam and had been filled with sand and gravel.

Evidence presented at the hearing would appear to indicate that there is considerable seepage through the dam during the irrigation season and that during flood time the sand and gravel levee would be washed out to be replaced later.

At the request of the Examiner a tabulation of the acreage irrigated in each month from and by the irrigation system of the San Benito Land and Water Company since its ownership thereof was submitted to the Division.

An inspection of the table shows that the maximum acreage irrigated during any one month by the San Benito Land and Water Company was 532 acres in May 1917. The maximum amount of water allowed by the Division of Water Rights for irrigation use for all crops other than rice is an equivalent of one second foot continuous flow to each 80 acres of land which amount will cover the land to a depth of nine inches per month. Upon this basis it would appear that an equivalent flow of 10.4 second feet would be ample to satisfy the requirements of the Company's past use. This flow would be equivalent to approximately 640 acre feet for a 31 day month.

The Division of Water Rights has on file in the office a record of the flow of the San Benito River as measured at a point about a mile above the confluence of Tres Pinos Creek and the San Benito River extending over the period from December 1, 1922 to May 31, 1923. There is also a record of the flow of Tres Pinos Creek as measured about 5 miles up the stream from the confluence of the two rivers.

These records show that during this six months period the flow in the San Benito River was 11,112 acre feet and the flow in Tres Pinos Creek was 3491 acre feet or a total of 14,603 acre feet practically all of which may be said to be available for diversion at the dam of the San Benito Land and Water



Company as any water which may have been lost in the gravels at the junction of the two streams would at least in part be if not wholly compensated by the flow from Bird Creek which enters the San Benito River at a point about a mile and a half above the protestant company's point of diversion.

According to the above records the monthly discharge of the San Benito River and Tree Pinos Creek was as follows:

December 1922. . . . .	3,590	acre feet
January 1923 . . . . .	3,490	" "
February 1923. . . . .	1,975	" "
March 1923. . . . .	1,258	" "
April 1923 . . . . .	2,337	" "
May 1923 . . . . .	<u>1,942</u>	" "
TOTAL. . . . .	14,603	acre feet

Rainfall records submitted at the hearing indicate that the rainfall for this season was about 85% of normal and therefore the runoff may be assumed to be subnormal for this period.

During this same period the acreage irrigated each month by the San Benito Land and Water Company was as follows:

December 1922. . . . .	0
January 1923 . . . . .	0
February 1923. . . . .	0
March 1923 . . . . .	9.5
April 1923 . . . . .	207
May 1923 . . . . .	695

From testimony presented at the hearing it would appear that the maximum acreage irrigated by the San Benito Land and Water Company during any one year was 2000. The average net duty of water for this locality as given in Bulletin No. 6 of the Division of Engineering and Irrigation, Department of Public Works, is 1.6 acre feet per acre per annum. The Engineer of the Hollister Irrigation District assumes a net duty of 1.6 acre feet and allows 30% conveyance loss which would give a gross duty of 2.3 acre feet per acre per annum. Assuming this value of gross duty it would require about 4,600 acre feet per annum for the proper irrigation of this area which amount is less than 1/3 of the water available at the protestant company's point of

diversion during the six month period of measured flow in the subnormal season of runoff 1922-1923.

The Hollister Irrigation District has before this office application number 2937 to appropriate from the San Benito River and other tributaries of the Pajaro River but has offered no objection to the approval of applications 3657 and 3907.

In view of the above it would appear that during a year of normal runoff there is unappropriated water in the San Benito River in sufficient quantities to justify the approval of the applications.

S E E R

Applications 3657 and 3907 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises:

IT IS THEREBY ORDERED that said Applications 3657 and 3907 be approved and that permits be granted to the applicants subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, this 25th day of May, 1926.

WES:MP

EDWARD HYATT, JR.  
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(Edward Hyatt, Jr.)  
CHIEF OF DIVISION OF WATER RIGHTS