

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

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IN THE MATTER OF APPLICATION NUMBER 3706 OF H. E. SEATON
TO APPROPRIATE WATER FROM SAND CANYON CREEK TRIBUTARY
TO THE BROWN VALLEY WATERSHED IN KERN COUNTY FOR
AGRICULTURAL AND DOMESTIC PURPOSES

DECISION NO. 3706 D 114
Decided June 25, 1926

APPEARANCES AT HEARING HELD June 4, 1925.

For Applicant:
H. E. Seaton

Deckweiler, Deckweiler & Finch
By Wilbur D. Finch

For Protestants:
George F. Brown

in propria persona

EXAMINER: Edward Hyatt, Jr., Chief of Division of Water Rights

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O P I N I O N

Application Number 3706 was filed November 5, 1923. It was protested by George F. Brown. It originally proposed an appropriation of 0.50 cubic feet per second from Sand Canyon Creek for agricultural and domestic purposes--diversion to be made at a point approximately 200 feet north of the Southwest corner of NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 9, T 25 S, R 38 E, M.D.M., being within the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 9, and use to be made on 50 acres within W $\frac{1}{2}$ of SW $\frac{1}{4}$ of Section 10, T 25 S, R 38 E, M.D.M.

On July 29, 1925, applicant requested permission to amend the description of the location of his point of diversion to read "N 86° 57' E 12945.2 feet to the $\frac{1}{4}$ corner common to Sections 10 and 11, T 25 S, R 38 E, M.D.M. being within the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 8, T 25 S, R 38 E, M.D.M." which point is approximately one-half mile upstream from the originally described point of diversion. On May 13, 1926, applicant requested permission to amend his application by reducing the amount sought from 0.50 to 0.25 cubic foot per second and he further sought to include in his place of use 10 acres additional in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 3, T 25 S, R 38 E, M.D.M. It appears that these changes can have no effect upon any other appropriator or user of the water and they have therefore been allowed and in our consideration of the application which follows it is the amended application which is referred to.

The application was 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 was set for a public hearing at the Hotel in the town of Brown, County of Kern, at 10:30 o'clock a.m. on June 4, 1925. Of this hearing applicant and protestant were duly notified.

The protest of George F. Brown was filed January 2, 1924. Protestant alleges in effect that the right to the use of the water which the applicant proposes to divert was initiated by him in 1910 under the law of appropriation existing at that time, that he has used the water continuously and had expended about \$20,000 on the development of same; that if he is deprived of this water his lands will become worthless; that he is furnishing water to the Southern Pacific Railroad Company, having recently built a new dam for this purpose and that he is supplying the town of Brown with its water.

In reply to the protest the applicant denies the statements of the protestant and alleges in effect that the protestant has made no use of the water for more than three years immediately preceding the date of the filing of the application and that therefore there is unappropriated water in Sand Canyon Creek which is subject to appropriation.

The facts as brought out by the testimony presented at the hearing appear to be as follows:

Two notices of appropriation were posted on Sand Canyon Creek by the protestant Mr. George F. Brown. One of these notices was dated March 15, 1910, and recorded March 24, 1910, in the records of Kern County and was for irrigation and household uses upon Sections 11 and 2, T 25 S, R 36 E, M.D.B. & M. (Quantity of water not stated at hearing). The other notice was dated September 21, 1913 and recorded October 2, 1913, in the records of Kern County and asked for an appropriation of 300 inches measured under a four inch pressure to be used on Section 2, 10 and 11, T 25 S, R 36 E, M.D.B.&M. for agricultural, horti-

cultural, domestic and culinary purposes on said land and watering live stock thereon and for use in the town of Brown and vicinity for the purpose of furnishing the inhabitants of said town with water for agricultural and domestic purposes and for watering live stock thereon, the water to be conveyed by an 8 inch iron pipe, a 4 inch iron pipe and a 3 $\frac{1}{2}$ inch iron pipe to Section 11, T 25 S, R 38 E.

The pipe was purchased from the City of Los Angeles and the line constructed in 1913. The line was placed on top of the ground for nearly its entire length and being unprotected was destroyed by the effect of cloudbursts and had to be relaid at three different times. Eight dams were also constructed by the protestant five of which were destroyed by the flood caused by the breaking of the Los Angeles Aqueduct siphon.

Mr. Brown stated that he had used the water continuously until the cloudburst occurred in 1923 and that in 1921 he had raised 40 acres of Sudan grass, 55 acres of Mile maize and 2 acres of garden which crops however had not been harvested but had been destroyed by a band of sheep that had passed through that country, that previous to that date alfalfa had been planted but was destroyed by flooding caused by the break in the Los Angeles aqueduct; that prior to 1923 there were about 40 head of cattle and horses pastured on his place which were watered from this supply; that during the years 1923 and 1924, the cattle and horses had been disposed of; that while water had been run through the 4 inch pipe line two or three times since 1921 that there had been none used for irrigation; that he had expended about \$20,000 in attempting to develop the project and that the only reason water has not been used for irrigation during the last five years has been on account of the deficiency in the water supply due to the excessive drought. The protestant also stated that he has continuously diverted water from Sand Canyon Creek in the past by means of a 2 inch pipe to a 1 inch pipe and thence to the town of Brown where it has been used by the inhabitants

thereof for drinking purposes; that this pipe line was installed about 1908 and has become so corroded that a very small amount of water now flows through it; that up until 1922 this 1 inch pipe line also supplied the Southern Pacific Railroad section quarters but since that time the Railroad has replaced this supply by their own water tank.

Testimony was produced by the applicant to the effect that since 1915 no beneficial use had been made of the water through the 4 inch pipe line with the exception perhaps of a small supply for stockwatering purposes for cattle and horses which were allowed to roam over a large territory and for occasional bands of sheep which passed through that country, the water flowing to waste upon the sands. This testimony was presented by a number of witnesses who would have been very likely to have noticed any beneficial use if such had been made.

Immediately following the hearing a field inspection was made by the examiner.

It was found that the four inch pipe line terminated in a field of Mr. Brown containing about 480 acres lying about one-quarter of a mile west of the town of Brown of which about 400 acres had been cleared but there was no evidence of any crops. The main four inch pipe line which laid uncovered upon the surface of the ground was in fair condition there being about three breaks which could be easily repaired. In the vicinity of the intake however the pipe line was completely shattered, cloudbursts having apparently washed it out at different times. There was evidence of several efforts made by Mr. Brown to re-install this portion of the pipe line.

The Los Angeles aqueduct crosses the canyon about a half or three-quarters of a mile above its mouth and about 2000 feet above this there was evidence of a concrete dam having been washed out, although a dam 1000 feet above that was in good condition. Mr. Brown's efforts to run a pipe line up the canyon in the past have been futile and it would appear that any such

efforts in the future by anyone would also be useless. However he had a ditch which could divert water at the mouth of the canyon had there been any water available at that point. According to his statement his ditch had been taking all the water since 1921 but it would appear that a large amount of water would have to be diverted before any beneficial use could be made.

About half a mile West of the 480 acre field mentioned above there was a reservoir approximately 200 feet square and three feet in depth which did not appear to have had any water stored therein.

At the intake of the domestic pipe line at the mouth of the canyon there was a 2 inch pipe line which was then connected to a 3 inch pipe line and then to a 1 inch line which led to the town of Brown.

Under date of July 6, 1925, George F. Brown submitted a copy of a contract which he had entered into with one Herman Dumble in which for a consideration of \$3,200 Mr. Dumble agreed to continue the construction of an 8 inch pipe line from a concrete dam in Section 9, T 25 S, R 38 E, to the 4 inch pipe line already laid in Sand Canyon.

This office was also informed by the applicant under date of April 12, 1926, that the City of Los Angeles has replaced a small dam built of loose rock and dirt for George F. Brown the dam having previously been washed out in 1916 by the flow of water from the aqueduct.

On April 27, 1926, another inspection was made.

There was no evidence of any new work having been done. The dam which had heretofore diverted the water into the gravity ditch had been washed out since the last inspection and there was no water whatever at the point. At the aqueduct there were 3 or 4 inches of water. The ditch intake and the temporary domestic line had been washed out otherwise conditions were about the same as at the previous inspection.

It was stated that during the summer of 1925 the Sand Canyon siphon overflowed many times due to the fact that it had filled with sand causing the water to spill and thereby washing a large amount of sand down the canyon. This was substantiated by the fact that the canyon bed from the aqueduct to the mouth of the canyon appeared to have several feet of sand which was not present at the last inspection. This may be the reason that there is no water in the canyon, the 3 or 4 inches present at the aqueduct sinking out of sight in the sand before it gets half way to the mouth of the canyon.

The first and most important question in this case is as to whether or not there is unappropriated water available in Sand Canyon Creek for the use of this applicant. There appears to be no reasonable doubt that protestant Brown initiated appropriations in 1910 and 1913 totalling more in amount than the normal flow of Sand Canyon Creek and that this was followed by years of effort and expenditure of thousands of dollars on the part of the protestant in an effort to put the water to beneficial use. The extent to which beneficial use was made and the time of, and reasons for its discontinuance are questions of considerable importance and concerning which there was a direct conflict of testimony between the protestant Brown and the witnesses for the applicant.

It should be noted that the discussion of this contest does not concern the domestic supply delivered through the 1 inch pipe line to the town of Brown. This use of water clearly constitutes a right prior and superior to the other claims involved and must necessarily be respected by later appropriators. It is, however, very small in amount as compared to the flow in the creek and is therefore of no great consequence in the dispute.

The protestant contends that he has spent \$20,000 in attempting to develop a water supply from Sand Canyon Creek, has labored continuously since 1910 toward this end and has to the fullest extent of his financial ability used due diligence toward applying the water to beneficial use. He admits

that no water has been used for irrigation since 1921 giving as the reason the drouth of the last 5 years. The records of the U. S. Weather Bureau at Kernville, the nearest station in that vicinity show that since 1910 the average precipitation has been 9.11 inches. The precipitation for the last 5 years as measured at this station is as follows:

1921	9.04 inches
1922	10.74 "
1923	3.52 "
1924	6.48 "
1925	7.75 "

From these records it appears that the precipitation for the year 1922 was above normal and that there must therefore have been water available for the use of the protestant had he been prepared to use it. According to protestant's statement in the transcript no use was made in 1922 on account of his works being destroyed by a cloudburst. The precipitation for the year 1923 was much below normal but during 1924 and 1925 it would not indicate a condition of extreme drouth.

The protestant claims that in the last year in which he used water for irrigation, namely 1921, 97 acres of crops were irrigated for a short time. This is denied by the witnesses for the applicant. It is not clear from the testimony of Mr. Brown in what manner any water used on these crops in 1921 was brought down--whether by the 4 inch pipe line or by the open ditch. It is concluded that such use as may have been made by Mr. Brown in 1921 for irrigation was very limited in time and in benefits received since no crop was harvested. The use prior to 1921 cannot be accurately determined from the conflicting statements in the record. Irrigation before that time is concluded to have been desultory and of small, if any, beneficial result. There has been no irrigation since 1921.

There has undoubtedly been water available for protestant's use at least in the years 1924 and 1925 at the point of diversion of the 4 inch pipe line. However, the pipe line has not since 1921 been in shape to operate.

Protestant's open ditch into which the water was flowing at the time of the inspection in 1925, would apparently function to carry the water to the land to be irrigated provided there was a large enough flow available to overcome transition losses, which would be very large. These losses would be in fact so large that probably no water could be successfully carried through this ditch to the town of Brown except for a few weeks during an ordinary season during which time there would probably be an abundance of water for the small use proposed by this applicant as well. It was not brought out that the ditch had ever actually been successfully operated.

The use for watering cattle and stock seems to have been incidental. Cattle ranging the valley would undoubtedly water at the end of the pipe line if water were there available, if not, they would secure water from anyone of a number of other sources of which Sand Canyon Creek would be one. As protestant Brown states that he has gone out of the stock business in this locality, having sold or given away his last horse in 1924, and having supplied no water for this purpose through the pipe line since 1921 this use is of no consequence.

It is the opinion of the Division of Water Rights that an economically feasible irrigation supply of any magnitude cannot be obtained from Sand Canyon Creek or similar creeks along the Western slope of the Inyokern Valley--the experience of Mr. Brown would seem amply to demonstrate this fact. The available water is only a few miners inches, the transmission distances are great and the losses in anything except lined conduits prohibitive and worst of all, the frequent cloudbursts have made it impossible to maintain any sort of a conduit in the canyon itself. The expense of constructing a conduit of sufficient strength to withstand the cloudbursts, or of carrying it down the canyon walls out of reach of flood flows would not be justified by the amount of water which could be obtained. Storage as proposed both by protestant Brown and the applicant is unfeasible there being neither an economical site nor sufficient water

to justify the construction of a dam if such site were available. Protestant Brown has exhibited courage, persistence and ingenuity in attempting to develop this water supply and spent years of effort and large sums of money on his project, yet it cannot be said that any definite beneficial result has resulted therefrom, much less anything in comparison with the effort involved. Neither do we believe that the applicant would be successful with an irrigation project if he received a permit for the same.

From the information brought out at the hearing and the facts determined as the result of the field inspections it is the opinion of this office that there is unappropriated water in Sand Canyon Creek but not in sufficient quantities to justify the irrigation of any considerable acreage; that there is however a dependable supply for domestic purposes together with perhaps a small and unreliable supply for irrigation purposes.

The office has been informed by the applicant that such a supply will meet his requirements and there appears to be no reason why the application should not be approved.

O R D E R

Application Number 3705 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, a protest having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that the said Application Number 3705 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

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

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EH :MP

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