

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

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In the Matter of Application 5185 of W. D. Rawson to Appropriate from Gold Creek and an Unnamed Creek tributary to Malibu Creek in Los Angeles County for Domestic Irrigation and Recreational Purposes and Application 5341 of W. B. Rawson to Appropriate from Gold Creek tributary of Malibu Creek in Los Angeles County for irrigation and Recreational Purposes.

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DECISION A 5185 - 5341 D 185
Decided February 10, 1928

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APPEARANCES AT HEARING HELD September 15th, 14, 1927.

For Applicant

W. D. Rawson

Donald M. Baker

For Protestants

Edward Kemper and J. Ben Fahey
Ida H. Murphy
John W. Cameron)
Paul C. and Freddie B. Griffith)
Fred D. Griffith)
G. J. Henderson)
Charles Knagenheim)
John C. and Margaret L. Cline)
Geo. Wernett)
Louis L. Busch)

Edward F. Wehrle
Edward F. Wehrle

T. G. Anderson

Edward McKain, Milo Walker)
and Edward F. Wehrle)

Edward F. Wehrle

EXAMINER: Everett N. Bryan, Deputy Chief, for Edward Hyatt, Jr., Chief of Division of Water Rights, Department of Public Works, State of California.

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O P I N I O N

General Features of Applications

Application 5188 was filed September 1, 1926. It proposes an appropriation of 0.25 of a cubic foot per second of direct diversion from Gold Creek and 0.25 of a cubic foot per second of direct diversion from an unnamed creek, both creeks being tributary to Malibu Creek in Los Angeles County, and 30 acre feet per annum of diversion to storage from said Gold Creek for irrigation purposes on 102.4 acres of land in Section 17, T 1 S, R 17 W, S.B.B. & M. and domestic and recreational purposes at Monte Nido (formerly Edenwild). The season of direct diversion is from about January 1st to about June 1st and for diversion to storage from about January 1st to about April 15th of each year.

Application 5341 was filed February 2, 1927. It proposes an appropriation of 150 acre feet per annum of storage from Gold Creek tributary of Malibu Creek in Los Angeles County to be diverted from about January 1st to about April 15th of each year for irrigation and recreational purposes on 265 acres of land in Section 17, T 1 S, R 17 W, S.B.B. & M.

The applications were protested by the following parties:

Edward McKain, Milo C. Walker and Edward F. Wehrle
Edward Kemper and J. Ben Fahy
Ida H. Murphy
John W. Cameron
Paul C. and Freda B. Griffith
Fred D. Griffith
C. J. Henderson
Charles Knagenhelm
John C. and Margaret L. Cline
George Wernett
Louis F. Busch

These 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 public hearing in accordance with Section 15 of the Water Commission Act on September 13, 1927 at 10:00

o'clock A.M. in Room 1026 Sun Finance Building, Los Angeles, California. Of this hearing applicants and protestants were duly notified.

PROTESTS

The protestants may be divided into two groups--those above the proposed points of diversion of the applicant, and those below. Those protestants above the proposed points of diversion are as follows:

Paul C. and Fredda B. Griffith
George Wernett
Edward Kemper and J. Ben Fahy
Edward McKain, Milo C. Walker and Edward F. Wehrle
Ida H. Murphy
Louis F. Busch

The protestants below the proposed points of diversion of the applicant are:

Fred D. Griffith
Charles Knagenhelm
John C. and Margaret Cline
Charles J. Henderson
John W. Cameron

The upstream protestants allege interference with riparian and other existing rights and that the water from the sources from which the applicant proposes to divert is already insufficient for their purposes.

The downstream protestants in addition to the grounds of protest alleged by the upstream users allege that the proposed diversions would lower the ground water plane and thereby decrease the supply derived from wells.

DESCRIPTION OF APPLICANT'S PROJECT

About four years ago, Mr. Rawson acquired a parcel of land consisting of approximately 104 acres (102.4 acres of which are described as the place of use in Application 5183) constituting what is known as the Edenwild subdivision. Recently he acquired a second parcel lying to the North of Edenwild consisting of about 180 acres of land. These two parcels were combined under

the name of "Monte Nido" 265 acres of which are named as the place of use in Application 5841.

This tract of land is located in the Santa Monica mountains lying about 36 miles westerly from the center of the City of Los Angeles. It lies entirely within the watershed of Cold Creek and the applicant maintains that he has riparian rights to the water. The applicant is however somewhat concerned about that portion of Section 11 of the Water Commission Act which would forfeit riparian rights after ten years of non-use and has taken the precaution to initiate an appropriative right to the water.

Mr. Rawson is developing this land as a mountain recreational center and subdivision for mountain home sites and proposes to construct a dam on Cold Creek where the creek enters the northerly line of the original 104 acre tract purchased by applicant and by this means create a lake which it is intended to use for recreational purposes such as fishing, boating and swimming. It is not proposed to use the lake as a storage reservoir for water supply purposes except perhaps as an emergency measure.

The domestic supply and the water to be used for the irrigation of shrubs and a golf course green will be principally obtained by wells located upon applicant's property although some water will be diverted from the unnamed creek for irrigation purposes during the early part of the season in order to reduce the cost of pumping.

The applicant maintains that once the artificial lake is filled the condition of the creek would be the same as before as the water, once the lake is full, will continue to flow down the stream, the only loss being by evaporation amounting to perhaps 40 or 50 acre feet per annum and possibly a sufficient amount to take care of any possible emergency that might arise, it being to applicant's interest to keep the lake level as high as possible.

PHYSICAL CHARACTERISTICS OF MONTE NIDO VALLEY

From the testimony presented at the hearing it appears from well borings and general observation that the Monte Nido Valley through which Cold Creek flows is underlain with a sandstone formation uptilted on its eastern slope at an angle of about 50°. Immediately overlying that formation is an altered blue black lime formation which is porous and retains water which seeps into it through the sandstone and lime itself from the eastern slope of the valley.

The porous lime formation is overlain with an impervious lime shale about one and one-half feet in thickness, covering practically the entire valley. On top of this shale formation there is a lava overflow which varies in thickness from ten or fifteen feet up to two or three hundred feet. In places this lava overflow is overlain with rocks and boulders and soil varying from two to four feet in depth.

The vegetation on the major portion of the Monte Nido Valley is very dense and consists mostly of buckhorn and red wood. The slopes of the watershed are for the most part very steep. On the valley floor are oaks, cottonwoods and sycamores which during a dry year suffer from lack of water.

SURFACE FLOW IN COLD CREEK

Aside from the flood waters there is always a fair flow of water in Cold Creek during the months of January and February. Most of the floods occur during the months of February and March.

During the seasons of 1922-23, 1923-24 and 1924-25 which were exceptionally dry years the rainfall at the City of Los Angeles was 52%, 43% and 51% of normal. There was however some high water during these seasons immediately following the rains which lasted for a short time only. The surface water of Cold Creek ceased to flow about July 1st in 1923.

The seasons of 1925-26 and 1926-27 were fairly good seasons of rainfall--the rainfall at the City of Los Angeles being 113% and 115% of normal respectively. Testimony indicated that during the 1925-26 season the surface water in Cold Creek ceased to flow during the early part of July and during the 1926-27 season about the first of August and that during the year 1926 the water was at one time so high at the Knagenhelm place that the creek was impassable, the water being about 15 feet deep and 60 feet wide.

It would appear that the surface flow of Cold Creek during a normal year of runoff was such that there was plenty of water to satisfy the needs of all users on the Creek and the proposed appropriation of the applicant.

UNDERFLOW IN CANYON

The protestants appear to be concerned about the proposed construction of a dam by the applicant which might possibly cut off the supply which is obtained from the underground waters, particularly should this dam be constructed to bedrock.

It seems entirely clear however that the underground supply is not obtained from the waters of Cold Creek itself but is derived from water which during the storms of winter sinks into the sandstone and lime formation which is uplifted on the eastern slopes of the valley in the vicinity of the Saddle Peak section and being absorbed percolate gradually underneath the shale formation.

A portion of this underground water enters the creek at the places of Mr. Gline and Mr. Knagenhelm where the blue-lime formation described above comes to the surface at the creek and augments the surface flow or else furnishes the entire supply to the creek depending upon whether or not there is surface flow above. This underground water enters the creek bed below applicants proposed dam site and it is believed that this underground flow will not be affected by any dam which the applicant may construct.

The fact that the underground water in the valley is obtained from the water which percolates into the blue-black lime formation from the hill-sides rather than from the flow of Gold Creek itself is substantiated by the fact that there appears to be little or no variation in the water levels in the wells with the varying surface flow of the stream.

APPLICATIONS AMENDED AND PERMIT CLAUSES SUGGESTED

As presented at the hearing, Application 5183 proposed direct diversion from January 1st to December 1st of each year and diversion to storage from November 1st to May 1st of each year and in addition to the 30 acre feet per annum to be collected to storage from Gold Creek it proposed diversion to storage of 10 acre feet per annum from the unnamed stream. The period of storage named in Application 5341 was from November 1st to May 1st of each season.

Toward the close of the hearing an apparent agreement was reached which was substantially as follows:

"Protestants withdraw their opposition to the approval of the two applications in consideration of the applicant agreeing to the following:

1. Applicant agrees to strike from Application 5183 the request to store any of the water of the unnamed tributary of Gold Creek.
2. Applicant agrees to amend both Application 5183 and Application No. 5341 with respect to the season for the collection of storage so that storage will be collected during the period from about January 1st to about April 15th.
3. Applicant agrees to amend application 5183 with respect to the season of direct diversion so that the applicant would divert under the application only during a period from about January 1st to about June 1st.
4. Applicant further agrees that he will place in the bottom of the storage dam in Gold Creek an outlet which will have a minimum diameter of twelve inches.
5. Applicant consents to the clause in the permit which will provide in effect that the rights which are to be acquired or may be acquired under the permit to be issued on 5183 for direct diversion are in lieu of and not in addition to the direct flow riparian rights which may be claimed by applicant.

6. Applicant consents to a permit clause to the effect that measuring devices will be installed in Cold Creek above and below the reservoir so that it may always be determined whether or not water is being withdrawn from the stream flow and placed in storage in the reservoir."

Under date of October 4, 1927, this office informed both applicant and protestants that the applications had been amended as proposed and the following permit clauses were proposed to be inserted in the permits to be issued in approval of Applications 5183 and 5341.

"By agreement of applicant (or permittee) and protestants it is understood as follows:

(a) Permittee shall install and maintain near the base of the storage dam an outlet of a minimum diameter of twelve inches.

(b) Permittee shall install and maintain suitable measuring devices above and below the storage reservoir such that it may readily be determined at any time whether or not water is being withdrawn from stream flow and placed in storage.

(c) Direct flow riparian rights--if any attach to the area proposed to be served under this application and permit--may be claimed in lieu of, but not in addition to the direct diversion appropriative rights initiated by this application".

Accompanying the outline of changes proposed the applicant and protestants were advised that should this course not be agreeable to either party this office would be pleased to entertain any suggestions which such party would care to offer.

Under date of October 11, 1927 the attorney representing the downstream protestants informed this office that there were certain additional conditions which Mr. Cline thought should be included in the stipulations as follows:

1. For sanitary reasons no bathing or swimming should be allowed in the contemplated reservoir.

2. The protestants should have ready access to the weirs to be established above the reservoir inlet and below the dam.

3. The upper weir should be placed upon bedrock so that all water flowing into the reservoir could be measured.

4. Assurance that it is not the intention of the applicant to impound waters at any point north of the saddle rock ridge extending in a general northeasterly direction from the north end of the proposed dam.

5. Guarantees against the dam being made an absolutely impervious structure resulting in loss of considerable underflow.

In an attempt to assist the parties at interest to come to an agreement in the matter a conference was arranged between Mr. Donald M. Baker representing the applicant, Mr. Trent G. Anderson representing the protestants and Everett M. Bryan, Deputy Chief of the Division of Water Rights.

At this conference which was held in Los Angeles on October 26, 1927 it was indicated to Mr. Anderson that the Division of Water Rights was without authority to insist upon a provision in any permits to be issued on these applications to the effect that there should be no swimming in the reservoir proposed. Furthermore, it was indicated that in view of the fact that the parties downstream do not and could not with safety expect to use water from Cold Creek for domestic purposes, there was no apparent reason why this point should be raised by Mr. Cline.

In the matter of access to the measuring devices which it was proposed to construct above and below the reservoir it was indicated that this appeared to be a reasonable requirement and that the Division could and would place such a condition in the permits, if issued.

As to the requirement that the measuring devices should be so constructed that the toe walls would run to bedrock, it was indicated that in the absence of borings this office was reluctant to insert such a condition in the permits without the consent of the applicant. However such devices would not serve the purpose for which they were to be constructed and would not satisfy the conditions of the clause proposed unless they were so constructed as to intercept substantially all of the flow.

In the matter that some assurance should be given that the reservoir would not extend beyond a certain point, it was indicated that the application and the accompanying maps described fully the project of the applicant and no changes could be made without the consent of the Division but that this office could not consistently place any inhibition in the permit preventing future amendments.

In the matter of the concern lest the dam be constructed to an absolutely impervious substratum it was indicated that considerations of safety would dictate such a course and that as downstream property owners the protestants should themselves be interested in having the dam so constructed in order to prevent the danger of undermining of the dam and endangering downstream property.

In this connection attention is directed to the inconsistency of the protestants in asking that the cut-off wall of the measuring device above the reservoir should be sunk to bedrock and that the dam should not be constructed to bedrock. If there were any underflow in the streambed it would be intercepted by the cut-off wall of the measuring device just as much as by a dam which is so constructed.

However, as shown above the underflow from which the protestants obtained their supply appears to be derived from the blue-black lime stratum underlying the impervious shale and lava formation, rather than from any underflow above the lava formation and this underflow would not be affected by any structure which the applicant proposes to construct in the streambed.

Mr. Anderson wished to discuss the matter further with his client Mr. Gline and the matter was delayed until December 19, 1927 at which time Mr. Baker and Mr. Anderson were informed that thirty days would be allowed to clear the matter up, after which this office would proceed in its considera-

tion of the applications on the basis of data available on January 16, 1927.

Mr. Baker advised this office under date of December 23, 1927 that he would endeavor to obtain a stipulation from Mr. Anderson by January 16th but if not it would be satisfactory to him to have permits issued on that date based on the material then before this office.

No further word having been received the Division of Water Rights has proceeded accordingly.

UPSTREAM PROTESTANTS

The protests of the upstream protestants were withdrawn at the hearing on being advised that the position of this office was that an upstream riparian owner could not be affected by these proceedings.

CONCLUSION

The use to which the applicant proposes to put the water is a useful and beneficial one and there appears to be a sufficient amount of unappropriated water in Gold Creek and its unnamed tributary to justify the approval of the applications.

In the permits issued in approval of Application 5183 there should be special clauses as follows:

- a. Permittee shall install and maintain near the base of the storage dam an outlet of a minimum diameter of twelve inches.
- b. Permittee shall install and maintain suitable measuring devices above and below the storage reservoir such that it may readily be determined at any time whether or not water is being withdrawn from stream flow and placed in storage and free access to these measuring devices shall at all times be allowed to interested parties.
- c. Direct flow riparian rights--if any attach to the area proposed to be served under this application and permit--may be claimed in lieu of, but not in addition to the direct diversion appropriative rights initiated by this application.

As Application 5341 is for storage only and no direct diversion is proposed clauses (a) and (b) only should be inserted in the permit.

O R D E R

Applications 5183 and 5341 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 in accordance with Section 16 of the Water Commission Act and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 5183 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and the following special terms and conditions to-wit:

1. Permittee shall install and maintain near the base of the storage dam, an outlet of a minimum diameter of twelve inches.
2. Permittee shall install and maintain suitable measuring devices above and below the storage reservoir such that it may be readily determined at any time whether or not water is being withdrawn from stream flow and placed in storage, such measuring devices to be of easy access to any interested party at all times.
3. Direct flow riparian rights--if any attach to the area proposed to be served under this permit--may be claimed in lieu of, but not in addition to the direct diversion appropriative rights initiated by Application 5183.

IT IS FURTHER ORDERED that said Application 5341 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and the following special terms and conditions to-wit:

1. Permittee shall install and maintain near the base of the storage dam, an outlet of a minimum diameter of twelve inches.
2. Permittee shall install and maintain suitable measuring devices above and below the storage reservoir such that it may be readily determined at any time whether or not water is being withdrawn from stream flow and placed in storage, such measuring devices to be of access to any interested party.

Dated at Sacramento, California this 10th day of February

1928.

(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

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