

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

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In the Matter of Application 2937 of the Hollister
Irrigation District to appropriate from the San
Benito River, Tres Pinos Creek and Pacheco
Creek, Tributaries of the Pajara River
in Santa Clara and Benito Counties
for Agricultural Purposes

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DECISION A 2957 - D 187

Decided March 23, 1928

APPEARANCES AT HEARING HELD January 26, 1928.

For Applicant

Hollister Irrigation District

Carl Ladd, President
Dan Regan and
B. W. Barrett, Directors

For Protestant

Lilla B. Benschaw

No appearance

For San Juan Valley Farmers

O. F. Overfelt
W. O. Laederich
D. A. Freitas
E. J. Overfelt

EXAMINER: Harold Conkling, Chief of Division of Water Rights.

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O P I N I O N

Application 2937 was filed with the Division of Water Rights on
July 21, 1922. It proposes an appropriation of 100 cubic feet per second of
direct diversion from the San Benito River in San Benito and Santa Clara
Counties and diversion to storage as follows:

40,000 acre feet per annum from the San Benito River in San Benito
County to be diverted to storage in the Hernandez Reservoir
(capacity 30,000 a.f.)

27,000 acre feet per annum from Tres Pinos Creek in San Benito County to be diverted to storage in the Tres Pinos Reservoir (capacity 21,580 a.f.)

11,000 acre feet per annum from Pacheco Creek in Santa Clara County to be diverted to storage in the Harper Canyon Reservoir on Pacheco Creek (capacity 5,920 a.f.)

The period of direct diversion is throughout the entire year and the period for diversion to storage is from about October 1st to about June 1st of each season.

It appears that the surface storage reservoirs are intended partly for use in regulating the flood flows for purposes of induction to underground storage. According to the application it is proposed to store underground whatever water there is available from the appropriation of natural flow during the flood season, and also such portion of the stored water as is not required for irrigating by gravity about one-fourth of the total agricultural land in the District. It is proposed to accomplish this underground storage by means of temporary barriers in the stream beds and the spreading of the water over the gravel areas shown on the maps accompanying the application. The water will be rediverted from the underground basin by individual and community owned pumps. The capacity of the underground reservoir is estimated to be 100,000 acre feet and its surface area 40,000 acres. It is proposed to store underground annually 60,000 acre feet of which 32,000 acre feet will be derived from the San Benito River, 17,000 acre feet from Tres Pinos Creek and 11,000 acre feet from Pacheco Creek. The water will be used for agricultural purposes on 31,000 acres of land lying within the boundaries of the Hollister Irrigation District in San Benito County. The application was protested by Lilla B. Renshaw.

APPLICATION SET FOR PUBLIC HEARING

Application 2937 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 Room 707 Forum Building, Sacramento, California, at 2:00 o'clock P.M. on January 25, 1928. Of this hearing applicant and protestant were duly notified.

PROTEST

The only protest filed against the approval of Application 2937 was filed on April 21, 1927 by Lilla B. Benschaw who claims an interest in approximately 1020 acres of land which lie within the boundaries of the Rancho Cienega de Gabilan, on the westerly bank of the San Benito River about one to two miles southwest of the Town of Tres Pinos.

Protestant claims the right to the use of the water of San Benito River by virtue of riparian ownership, appropriation and actual use for the period of the Statute of Limitations and alleges in effect that if the application is approved it would result in interference with her rights as the amount of water in the San Benito River during the summer months is insufficient to irrigate the lands riparian thereto and susceptible of irrigation therefrom.

The attorney representing the applicant endeavored to obtain the withdrawal of the protest but was informed by the attorneys for the protestant under date of December 7, 1927 that the protest having been filed, they preferred not to put the protestant on record as withdrawing the same but in view of recent decisions of the courts relative to the power of the Water Commission, they would be perfectly willing to have the matter set for hearing at which time they would not appear or produce any evidence in support of their protest.

On January 7, 1928 this office was advised that the protestant would not be represented at the hearing but did not want this to be understood as a waiver of any of her rights in the matter or as a withdrawal of her protest.

Present at the hearing was a committee consisting of C. F. Overfelt, E. J. Overfelt, D. A. Freitas and W. O. Leaderick who represented the San Juan Valley Farmers. These gentlemen came to protest against the inclusion of their lands within the district rather than in opposition to the appropriation of water, a matter which it was explained to them would not come within the jurisdiction of this office.

EFFECT OF PROPOSED PROJECT ON PROTESTANT

From the information at hand it would appear that the only feature of the application which might inure to the injury of the rights which the protestant claims is the proposed storage in the Hernandez Reservoir which is located on the upper reaches of the San Benito River. The point of direct diversion and the redirection of stored waters lies below the property of the protestant and therefore the protestant would not be injured thereby.

From Bulletin 6 of the Division of Engineering and Irrigation entitled "Irrigation Requirements of California Lands" the normal season of irrigation in the San Benito Valley appears to be from about the middle of April to about the middle of October. The season of diversion to storage in the Hernandez Reservoir proposed by the applicant is from about October 1st to about June 1st of each season. This season of diversion to storage overlaps somewhat the normal irrigation season but the burden will be upon the applicant to divert at such times as not to interfere in any way with prior existing rights. The possible interference with the alleged rights of the protestant during the beginning and end of the normal irrigation season would not constitute sufficient grounds to justify the denial of the application,

nor would it constitute sufficient grounds for limiting the season of diversion, for in some years if not in all there would appear to be water available during the early and late portions of the irrigation season for the use of the applicant.

FUTURE PLANS OF APPLICANT

From the testimony presented at the hearing it would appear that the applicant would not be in a position to start construction work immediately should permit be granted and it was requested by this office that a program of construction work be submitted.

Under date of February 16th the District informed this office that it expected to carry out the following program in connection with this project.

- (1) Stream gaging.
- (2) Survey of underground water levels within the District.
- (3) Educational campaign.

A statement was made to the effect that due to low prices in farm products it was felt that the time was not ripe to launch a campaign for the expenditure of any considerable amount of money.

CONCLUSION

From the above it would appear that the District contemplated little if any actual construction work for some time, the work that is outlined consisting of preliminary investigation only.

The use to which the District proposes to put the water is a beneficial one and as there appears to be a sufficient amount of unappropriated water to justify the approval of the application, permit should be issued, and a reasonable time allowed therein within which to commence construction work. The law does not sanction nor will this office be a party to any attempt to place rights "in cold storage" and unless the applicant begins con-

struction work within the time specified or can show good cause for extension of time the permit would become subject to revocation.

O R D E R

Application 2937 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 2937 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, California, this 23rd day of March , 1928.

(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

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