

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

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In the Matter of Application 5304 of the San Juan Water Company  
to appropriate from San Juan Creek in Orange County  
for Domestic Purposes.

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DECISION A 5304 D-254

Decided *March 31, 1930*

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APPEARANCES AT HEARING HELD AT LOS ANGELES, December 4, 1929.

For Applicant:

San Juan Water Company

W. G. Irving and E. C. Drumm

For Protestants:

Rancho Santa Margarita

T. B. Cosgrove

Albert Fryor )  
Teresa Yorba )  
John Forster )  
Lae E. Forster )  
Trabucco Water Company )  
Capistrano Water Company )

James G. Scarborough  
and R. C. Mize

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights.

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O P I N I O N

GENERAL FEATURES OF THE APPLICATION

Under Application 5304 it is proposed to divert to underground storage 2,000 acre feet per annum of the waters of San Juan Creek at a maximum rate of 20 cubic feet per second. The season of diversion is throughout the entire year.

The waters will be diverted by means of temporary brush and sack dams at points on the stream which will vary in location from year to year depending upon the condition of the stream channel but are described in general as being within Sections 13, 14 and 23, T 8 S, R 8 W, S.B.B. & M. The spreading grounds have an area of 220 acres located within Lot 4, Section 13, SW $\frac{1}{4}$  NE $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 14; and NE $\frac{1}{4}$  and E $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 23, T 8 S, R 8 W, S.B.B. & M. Recovery from underground storage will be made by means of three wells located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 23, T 8 S, R 8 W, S.B.B. & M. having a combined capacity of five cubic feet per second. The water is to be used for domestic purposes within a territory comprising 2,457 acres of land lying within Sections 10, 14, 15, 21, 22, 23, 24 and 25, T 8 S, R 8 W, and Sections 19 and 30, T 8 S, R 7 W, S.B.B. & M.

The application was protested by the following parties:

Albert Fryor  
Teresa Yorba  
Rancho Santa Margarita  
John Forster  
Mae E. Forster  
Trabuco Water Company  
Capistrano Water Company

PROTESTS

The protestants in general allege as follows:

1. There is no unappropriated water in San Juan Creek.
2. Any water conveyed out of the watershed will result in the lowering of the underground water level in the valley.
3. The proposed diversion will permit the infiltration of salt water into the basin.
4. The supply asked for is excessive.
5. The spreading area is not owned by applicant.

HEARING SET IN ACCORDANCE WITH SECTION 1a  
OF THE WATER COMMISSION ACT

Application 5304 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on December 4, 1929 at 10:00 o'clock a.m. in Room 1026 Associated Realty Building, Los Angeles, California. Of this hearing applicant and protestants were duly notified.

MOTIONS TO DISMISS APPLICATION 5304

Protestants Rancho Santa Margarita, Trabuco Water Company and Capistrano Water Company filed motions to dismiss Application 5304 on the grounds that said application seeks a permit to withdraw, by means of wells, the underground percolating waters from San Juan Basin, the Division of Water Resources not having jurisdiction in the case of purely percolating waters.

It is provided as follows by Chapter 423 Statutes of 1919, p. 826:

"Section 1. The storing of water underground by the owner of the right to the use thereof, and the damming of streams and the flowing of water on lands necessary to the accomplishment of such storage, if the water is to be later withdrawn by pumps, tunnels or other suitable means for irrigation, domestic or other beneficial uses within the territory served by the owners of the water right, with water for irrigation, domestic or other beneficial uses, are hereby declared to be reasonable, economic and beneficial methods of taking and applying such water, if the water so taken is from time to time being put to the beneficial uses for which it was appropriated."

It is provided in Section 16 of the Water Commission Act as amended in 1925 as follows:

"Section 16. Every application for a permit to appropriate water shall set forth \*\*\*\*\*; if for storage in a reservoir, in addition to the general requirements prescribed above, the height of dams, the capacity of reservoir, and the use to be made of the impounded waters, except that for storage underground these additional requirements as to height of dam and capacity of reservoir shall be given as near as may be; \*\*\*\*\*"

The foregoing provisions appear to authorize the Division of Water Resources to receive and act upon applications such as Application 5304.

It is our view that appropriations of the character sought by the applicant in this case are duly authorized. The motions for dismissal should accordingly be denied.

#### DISCUSSION OF PROTESTS

##### (1) There is Unappropriated Water in San Juan Creek.

There being no reliable stream records of the flow of San Juan Creek available, E. A. Rowe engineer for the applicant made a hydrographic study of the San Juan Valley based upon comparison with the drainage basins of Santiago Creek, San Dieguito River and the San Gabriel Rivers. An estimate was also made of the annual consumptive use. The conclusions which Mr. Rowe arrived at were as follows:

1. Estimated average annual water crop of San Juan Creek and tributaries	16,024 ac.ft.
2. Annual consumptive use for entire net area of Valley fill and present irrigated area outside of the valley fill	<u>4,972 ac.ft.</u>
3. Average annual surplus	11,052 ac.ft.
4. Estimated maximum depletion of ground water storage during critical period to yield a continuous draft of 4972 acre feet per annum	6,600 ac.ft.
5. Estimated average annual waste into the sea under a draft of 4,972 acre feet	12,400 ac.ft.
6. Amount of water per season applied for (Application 5304)	2,000 ac.ft.
7. Area of applicant's spreading grounds	320 acres
8. Capacity of applicant's spreading grounds @ 1.5 second foot per acre	330 sec.ft.
9. Time required for applicant to spread 2,000 acre feet @ a rate of 20 second feet	50 days

The engineer for the protestants, Mr. F. C. Finkle, testified that in his opinion the study made by Mr. Rowe was erroneous. Among the reasons given for this opinion was his contention that the basins selected for comparison were not suitable and the methods of calculation were antiquated. Although Mr. Rowe's report was severely criticised by Mr. Finkle no report was submitted by the protestants' engineer in support of his contentions.

An exhaustive study was made by the engineers of the Orange County Flood Control District of the runoff of the streams in Southern California and by taking into account the different factors which enter into the determination of runoff it was estimated that the average seasonal runoff on San Juan Creek was 16,000 acre feet and on Trabuco Creek 9,000 acre feet per annum, or a total runoff of 25,000 acre feet which is 57% in excess of the estimate made by Mr. Rowe.

According to Mr. Finkle's own testimony there was waste into the sea during the following seasons 1904-05, 1905-06, 1906-07, 1908-9, 1909-10, 1910-11, 1913-14, 1914-15, 1915-16, 1916-17, 1921-22 and 1925-26. During the seasons 1915-16, 1921-22 and 1926-27 there was waste into the sea of considerable volume. Also according to Mr. Finkle's testimony there has been in every year excepting 1929 some water which has risen out of the stream bed in varying volumes, from a few inches only to 150 inches in wet years that has risen below the bridge on the San Diego highway near Capistrano that has flowed down and some of which has reached the ocean.

Aaron Buckheim a witness for applicant, testified that since 1906 water has flowed in the stream except during the months of July and August, the normal flow varying from about 15 to 150 inches at a point about one-half mile above the mouth of the stream. In view of the above it is the

opinion of this office that there is unappropriated water in San Juan Creek during a year of normal runoff in sufficient quantities to justify the approval of the application.

2. The proposed diversion will not result in the further lowering of the underground water level in the valley.

Under Application 5304 it is proposed to divert water from San Juan Creek which would normally find its way to the ocean without serving any useful or beneficial purpose and to spread this water upon an area from which it will be rediverted by pumping from wells. The applicant could not under any permit issued in approval of this application extract a greater quantity of water from the basin than he had by his spreading operations charged into the basin. The purpose of the application is to insure the maintenance of the present water level rather than to lower it. Whatever right the applicant may already have to pump from the basin will not be affected by the approval of this application.

It was the opinion of protestants' engineer that at the point where applicant proposes to spread the water there are no voids to be filled the water plane being already higher than sea level. If such is the case it is obvious that further extraction from the basin would create reservoir capacity for the waters to be spread. While at first the cone of depression may be local it will gradually cause a depression of the water level in the basin which will ultimately be augmented by the spreading operations.

3. Infiltration of salt water.

The protestants allege in effect that the present withdrawals from the basin have resulted in such a depletion of the underground waters as to cause an infiltration of salt water from the ocean and that the approval of

the application will intensify this condition. Testimony presented at the hearing indicated that the waters which were extracted from the basin were potable at the present time and with proper regulation of spreading and withdrawal it is not seen wherein the condition would be materially changed except beneficially. If the cone of depression is filled up to sea level immediately after pumping it would be impossible for the salt water to enter.

4. The Amount of Water Applied for is not Excessive.

The amount of water which applicant applied for was estimated upon the basis of area to be served, the estimated population, and the consumption of water per capita based upon similar subdivisions. The computations were based upon a future population of 24,000 people requiring a supply of 75 gallons per capita daily which in our opinion is not excessive. Obviously if the water is not needed it will not be pumped and if it is not pumped it will not be taken away from the others who might use it.

5. Rights to Spread Water will be Acquired by Applicant upon Approval of Application.

The San Juan Water Company is organized as a public utility corporation and has taken every step necessary to acquire the necessary rights and powers under the rules and regulations of the State Railroad Commission and such powers as may be granted by the Board of Supervisors of Orange County to proceed and conduct its business.

Furthermore, S. H. Woodruff, manager of the Dana Point Syndicate, and Mr. Wellborn, representing the Petroleum Securities Company, testified at the hearing that in the event that Application 5304 were approved the right to spread water upon their lands would be granted.

GENERAL

Relative to the protests of Santa Margarita Rancho, Trabuco Water Company and Capistrano Water Company it may be said that as the points of diversion of these protestants are upstream from the proposed points of diversion of the applicant it would be a physical impossibility for the applicant under the appropriative right which it now seeks, to interfere in any way with the rights which they may have.

As to protestants John and Mae Forster who own lands both below and above the proposed points of diversion it would appear that portions of their lands would be benefitted by the spreading operations. Testimony presented at the hearing indicated that the San Juan Water Company is under agreement to furnish water to the lands of John Forster and others.

No testimony was presented at the hearing in support of the contentions of Teresa Yorba and Albert Pryor as individual protestants. Suffice it to say that it will be incumbent upon applicant to so operate under any permit which may be issued as to interfere in no way with any vested rights.

CONCLUSION

The use proposed by the applicant is a useful and beneficial one, the applicant has established relationship between itself and the territory to be served and the area to be flooded and agreements for rights of way have been entered into. It is the opinion of this office that there is a sufficient amount of unappropriated water in San Juan Creek to justify the approval of the application and such action is in order.

A clause should be incorporated in any permit issued in approval of the application to the effect that permittee shall establish such gaging



stations and obtain and furnish to the Division of Water Resources such records of flow as may be required to determine with reasonable certainty the quantity of water placed in storage and the quantity subsequently recovered under the provisions of the application and permit.

ORDER

Application 5304 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests and motions for dismissal having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that the Motions to Dismiss Application 5304 be, and are hereby denied, and

IT IS HEREBY FURTHER ORDERED that Application 5304 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 subject also to the following special terms and conditions, to wit:

"Permittee shall establish such gaging stations and obtain and furnish to the Division of Water Resources such records of flow as may be required to determine with reasonable certainty the quantity of water placed in storage and the quantity of water subsequently recovered under the provisions of the application and permit."

WITNESS my hand and the seal of the Department of Public Works of the State of California this 31 day of March 1930.

EDWARD HYATT, State Engineer

BY Harold Conkling  
Deputy

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