

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

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In the Matter of Applications 6653, 6655 and 6656 of Mrs. A. F. Cochrane to appropriate from Coyote River in Santa Clara County for Irrigation Purposes and Application 6654 of Mrs. A. F. Cochrane to appropriate from Coyote River in Santa Clara County for Domestic Purposes.

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DECISION A. 6653, 6654, 6655, 6656 D-306

Decided

January 26, 1932

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APPEARANCES AT HEARING HELD AT SAN JOSE, OCTOBER 27, 1931

For Applicant

Mrs. A. F. Cochrane

Louis O'Neal and
H. D. Durst

For Protestants

Santa Clara Valley Water Conservation District
Coyote Water Protective Association

Herbert C. Jones
J. O. Hayes

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights,
Division of Water Resources, Department of Public Works,
State of California.

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OPINION

Applications 6653 to 6656, inclusive, were filed by Mrs. A. F. Cochrane on April 23, 1930, to appropriate from Coyote River throughout the entire year. Essential features of the several applications are as follows:

Number	Purpose	Amount	Point of Diversion	Place of Use
6653	Irrigation	0.64 c.f.s.	SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec.11 T9S, R3E, M.D.M.	51 acres Sec.11 & 14 T9S, R3E, M.D.M.
6654	Domestic	0.025 c.f.s.	SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec.11 T9S, R3E, M.D.M.	NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 11 T 9S, R3E, M.D.M.
6655	Irrigation	0.22 c.f.s.	SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec.13 T9S, R3E, M.D.M.	18 acres Sec. 13, T9S, R3E, M.D.M.
6656	Irrigation	0.12 c.f.s.	NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec.11 T9S, R3E, M.D.M.	9.5 acres Sec. 11 T9S, R3E, M.D.M.

The applications were protested by Santa Clara Valley Water Conservation District and Coyote Valley Protective Association.

PROTESTS

The Coyote Water Protective Association claims riparian rights and continuous use of underground waters from the Coyote River for more than 16 years last past. The area from which it is claimed water is diverted extends from a point at or above applicant's proposed points of diversion to a point about 18 miles downstream therefrom bordering on each side of Coyote River. Protestant alleges in effect that the proposed diversions will reduce the amount of water to which its members are entitled as riparian owners and will also reduce the amount of water which sinks into the gravels underlying the lands from which they pump, the right to which was confirmed to them by the decision of the Supreme Court in the case of Miller v. Bay Cities Water Company, (157 Cal. 256). It is also alleged that the proposed diversions would interfere with the plans of the Santa Clara Valley Water Conservation District.

The Santa Clara Valley Water District claims that the land owners within the District have for many years used the total annual flow of the stream both surface and subterranean and alleges in effect that the proposed appropriations would result in diminishing the amount of water to which the

District and the lands embraced therein are entitled and thereby obstruct the work contemplated by the District.

It claims that applicant would not be entitled to reservoir releases produced by any reservoir which it may construct for the purpose of conserving the waste waters of Coyote River.

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

Applications 6653, 6654, 6655 and 6656 were completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested were set for a public hearing in accordance with Section 1a of the Water Commission Act on October 27, 1931, at 10:00 o'clock A.M. in the Council Chamber, City Hall, San Jose, California. Of this hearing applicant and protestants were duly notified.

LEGAL REQUIREMENT OF POSTING NOTICES SUBSTANTIALLY COMPLIED WITH

At the hearing protestant Santa Clara Valley Water Conservation District claimed that applicant did not post the notices of appropriation as required by law, inasmuch as at least two of the notices if not all four were interchanged or not posted at the points designated and that two of them were posted at least a mile and one-quarter from the points intended.

Section 16 of the Water Commission Act provides that such notices be posted "in at least two conspicuous places in the locality to be affected by said ^{proposed} appropriation." It is the opinion of this office that this requirement has been substantially complied with. It is not necessary, nor do we believe that the Act intended that notices of the proposed appropriation should be posted at or in the immediate vicinity of the proposed point of diversion.

Not only were the applications advertised by posting but notices were also mailed to the protestants. They were fully advised of the proposed diversions and the points at which it was proposed to appropriate the waters of Coyote River and obviously were not misled by the posting. In fact it was admitted by protestant at the hearing that the manner of posting did not in anywise influence, prejudicially or otherwise, its action in filing protests against the approval of the several applications.

HYDROGRAPHY AND PHYSIOGRAPHY

Coyote River, the source of the proposed appropriations, rises to the eastward of the Santa Clara Valley, in that portion of the Coast Range Mountains known as the Hamilton Range. It is formed by the union of a number of smaller streams which rise and have their confluence south of Mt. Hamilton. Coyote River then issues in a single stream into the Santa Clara Valley through what is known as the upper gorge about 20 miles south of the City of San Jose and thence flows northwesterly along the eastern edge of the Santa Clara Valley about 8 miles to a point where the valley narrows to what is known as the lower gorge which is about 12 miles south of the City of San Jose. The channel of the river passes through this lower gorge and extends northwesterly about 20 miles to San Francisco Bay.

The drainage area above the upper gorge or above a point located about 1/4 mile below the junction of Coyote River and its tributary Las Animas Creek is approximately 197 square miles.

Only during periods of high water and in time of freshets does the flow of Coyote River reach San Francisco Bay and at such times a large

quantity of water sinks into the gravels to at least as far northerly as the City of San Jose and flows or percolates through the gravels to San Francisco Bay. In fact, it appears that when the discharge of Coyote River at Madrone falls below 30 second feet it is entirely absorbed in the gravels before reaching Edenvale.

Between San Jose and San Francisco Bay the ground water is under pressure causing the water to flow on the surface from artesian wells. In the course of the last fifteen years the area of artesian flow on the north has decreased from about 30,000 acres to a very small fringe skirting San Francisco Bay.

GENERAL DISCUSSION

As early as 1920, the water users of Santa Clara Valley became alarmed over the water situation, it appearing that the natural replenishment of the ground water from which the irrigation supply was principally drawn was failing to adequately meet the demands upon it. Realizing the necessity of making provisions for the future by the conservation of the water supply, active steps were taken by various organizations in the valley to create a representative body for the purpose of studying the situation. As a result of this movement the Santa Clara Valley Water Conservation Committee was formed and Fred E. Tibbetts and Stephen E. Kieffer, consulting engineers of San Francisco were retained by the Committee to make a detailed engineering investigation and report upon the irrigation supply with particular reference to methods of conservation of waste flood waters. In a report dated March, 1921, the engineers estimated the total seasonal runoff of Coyote River above the "upper gorge" which is just below the junction of Las Animas Creek and Coyote River, to be 80,380 acre feet per annum, of which

81.8% occurred during the three months of January, February and March and 95.5% occurred during the months of December to April inclusive; that of the 80,380 acre feet, 20,500 acre feet or about 25% were absorbed in the gravels of the valley and 61,500 acre feet or about 75% was wasted into San Francisco Bay. The report indicates that the replenishment of the underground water in the valley is almost entirely dependent upon the flow from contributing drainage areas, there being very little water absorbed from the precipitation on the valley floor and the geology of the region is such that there is no reasonable possibility of the underground water coming from a distant source.

The report also indicates that the point had been reached where the demand was in excess of the natural ground replenishment and it was recommended that flood waters be stored on the several streams to be released for the replenishment of the underground waters by means of spreading.

In order to carry out the suggestions of the engineers, applications were filed with this office to appropriate water from different streams, one of which was Coyote River. From this source both direct diversion and storage were proposed. These applications were cancelled however some five years prior to the filing of Applications 6653 to 6656, inclusive, by Mrs. Cochran.

The Santa Clara Valley Water Conservation District was formed by election on November 5, 1929, and as a result of the general alarm over the continued retreat of the ground water, the Division of Water Resources was requested to undertake an investigation of water supply conditions in the Santa Clara Valley. On January 1, 1930, an agreement was entered into between the District and the Division whereby a general survey of water resources of the valley to extend over a period of three years was to be conducted under the supervision of the Division. This investigation was prosecuted according to the agreement and a progress report covering the period from January 1

to September 30, 1930, has been submitted. This report, while not attempting to present either conclusions or recommendations, clearly indicates that between the years 1915 and 1930 there has been a gross depletion of the underground waters of the valley amounting to 594,000 acre feet or an average of 39,600 acre feet per annum; that this underground basin is fed by percolating waters from Coyote River and that only such waters in Coyote River as pass Edenvale (beyond which there is little if any percolation) may be considered as unappropriated waters. The report indicates that during the 24 year period 1903-1912 and 1916-1930 the average annual waste has been about 40,800 acre feet on Coyote River below Edenvale, which is some 20,000 acre feet less than the amount estimated by Messrs. Tibbetts and Kieffer.

Table 21 of the Progress Report referred to above, sets forth the incidence and amounts of the surplus flow of Coyote River during the seasons 1902-03 to 1911-12, inclusive, and the seasons 1916-17 to 1929-30, inclusive. The following table is a modification of Table 21.

TABLE SHOWING NUMBER OF DAYS IN EACH MONTH
DURING WHICH THERE WAS SURFACE FLOW
IN COYOTE RIVER AT EDENVALE

Season	Precipitation: in percent of normal	Number of Days in Each Month During Which Coyote River Flowed at Edenville							
		DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
1902-03	98	0	5	13	15	21	0	0	54
1903-04	93	0	0	10	22	9	0	0	41
1904-05	109	0	0	13	16	2	4	0	35
1905-06	127	0	15	15	31	30	0	0	91
1906-07	151	14	31	28	31	30	8	0	142
1907-08	79	13	16	17	17	0	0	0	63
1908-09	131	0	21	28	31	25	0	0	105
1909-10	93	4	24	26	13	8	0	0	75
1910-11	135	0	20	24	31	4	0	0	79
1911-12	67	0	0	0	5	2	0	0	7
1916-17	93	8	11	9	31	30	31	29	149
1917-18	57	0	0	0	9	0	0	0	9
1918-19	112	0	0	14	31	2	0	0	47
1919-20	68	0	0	0	10	4	0	0	14
1920-21	103	5	14	28	18	0	0	0	65
1921-22	102	7	8	24	31	27	0	0	97
1922-23	91	15	13	28	13	27	0	0	96
1923-24	40	0	0	0	0	0	0	0	0
1924-25	98	0	0	15	0	0	0	0	15
1925-26	88	0	0	19	0	10	0	0	29
1926-27	91	0	0	19	27	19	0	0	65
1927-28	81	1	0	3	8	8	0	0	20
1928-29	72	0	0	3	0	0	0	0	3
1929-30	83	0	2	3	6	0	0	0	11
TOTAL		67	180	339	396	258	43	29	1312
AVERAGE	94	2.8	7.5	14.1	16.5	10.7	1.8	1.0	
NUMBER OF SEASONS DURING WHICH THERE WAS SURFACE FLOW AT EDENVALE		8	12	20	20	17	3	1	

From the above table it may be noted that during the years of record there was no surface flow in Coyote River at Edenvale during the months of July to November, inclusive, and that during one year only was there surface flow during the month of June. It is therefore the opinion of this office that the season of diversion from Coyote River should be limited to the period from about December 1 to about May 31 of each season. Even during this season the flow is intermittent and irregular and will customarily be available only when the lands of applicant should already have been wetted by the same storms which occasioned the increased stream flow. Applicant, however, being fully advised of the uncertainty and irregularity of this source of supply, desires permits on the several applications and has consented to the limitation of her proposed appropriations to such time as there is flow on the surface at Edenvale, admitting that such limitation is both proper and reasonable.

APPLICANT NOT ENTITLED TO FUTURE RESERVOIR RELEASES

We can see no basis for the apprehension expressed by protestant Santa Clara Valley Water Conservation District that approval of these applications might lend color of right by which applicant would later endeavor to take and use reservoir releases of protestant, as such releases would be private waters and clearly subject to the control and disposition of the creator.

CONCLUSION

While there appears to be some doubt as to the necessity for the water applied for during the season of its availability, the applicant has signified that she desires the privilege of diverting such water as may be available in order to supplement her diversion under claim of riparian ownership and it is therefore the opinion of this office that Applications 6653,

6654, 6655 and 6656 may be approved for diversion during the period from about December 1 to about May 31 of each season provided that a special clause be incorporated in each permit to the effect that diversions thereunder shall be made at such times only as under natural conditions existing at the time of filing of the applications water is flowing on the surface in Coyote Creek at Edenvale.

ORDER

Applications 6653, 6654, 6655 and 6656 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests 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 Applications 6653, 6654, 6655 and 6656 be approved for a limited period of diversion extending from about December 1 to about May 31 of each season and that permits 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 term or condition, to-wit:

Diversions hereunder may be made only when, under natural conditions as existed on the date of filing Applications 6653, 6654, 6655 and 6656, to-wit April 23, 1930, the flow in Coyote River would continue on the surface beyond a point opposite Edenvale.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 26th day of January, 1932.

EDWARD HYATT, State Engineer

BY Harold Conkling
Deputy

YES:MP

