

State of California
Department of Public Works
Division of Water Resources

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In the matter of Applications 7140, 7143 and 8388 by
Santa Clara Valley Water Conservation District to
Appropriate from Coyote River and Stevens Creek
For Irrigation and Domestic Purposes.

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DECISION A. 7140, 7143, 8388 D-400

Decided *March 24, 1937*

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APPEARANCES AT HEARING HELD AT SAN JOSE, SEPTEMBER 23, 1936

For Applicant (Applications 7140, 7143, 8388)
Santa Clara Valley Water Conservation District

Herbert C. Jones, Attorney
Fred H. Tibbetts, Engineer

For Protestants (Application 7140)
E. L. Haebl

In propria persona

For Protestants (Applications 7140 and 8388)
E. S. Brown)
J. Jepson)
Jans C. Wool)
F. G. Wool Packing Company)

Fred A. Wool

For Protestants (Application 7143)
Lida Leib Armstrong)
Elna Leib Wright)
Frank A. Leib)
R. C. Leib)

G. B. Leib of
Leib and Leib

Mrs. A. M. and Louis Stockmeir)
Kay Spence)
John Pacheco)
George Bernhard)
Antone Picchetti)

R. I. Meyerhals and
Louis Stockmeir

Stevens Creek Water Users, including the following:

Irene Davis)
G. B. M. Aransen)
August Baratta)
Herbert Pash)
W. B. Calvert)

For Protestants (Application 7143) continued

Stevens Creek Water Users, including the following (continued)

| | | |
|-----------------------|---|---------------------|
| Albert A. Olsen |) | |
| Emas Olsen |) | |
| Grant Barton |) | |
| E. Gasch |) | |
| Spasaje M. Chack |) | |
| J. N. Lucich |) | R. I. Meyerholz and |
| N. Radovich |) | Louis Stockmeir |
| H. R. Reid |) | |
| A. G. Damico |) | |
| Elizabeth B. McDonald |) | |
| Austin Lossee |) | |

For Interested parties (not record protestants)

| | | |
|-----------------------|---|---------------|
| City of Sunnyvale |) | |
| City of Mountain View |) | E. L. Maxwell |

O P I N I O N

DESCRIPTION OF PROJECTS

Under Application 7140, Santa Clara Valley Water Conservation District proposes to appropriate 40,000 acre feet per annum of the waters of Coyote River in Santa Clara County for irrigation and domestic purposes by diversion to storage at a point about six miles above where this stream debouches into the valley at the Upper Gorge. Coyote Reservoir, a surface storage reservoir of 30,000 acre feet capacity, has been constructed by the District at this point to be used as a regulator to conserve the flood crests which would otherwise waste into San Francisco Bay, retaining them only temporarily until they can be charged into the ground water basin underlying the District. The releases from surface storage will be spread upon receptive areas both within the natural channel below and outside the stream channel within the District boundaries. Recovery from underground storage will be made by private users, and by public agencies other than the District representing such users. The water recovered from underground storage will be utilized for irrigation and domestic purposes on 133,000 acres of land within the Santa Clara Valley Water Conservation District.

Under Application 7143, Santa Clara Valley Water Conservation District proposes to appropriate 4,000 acre feet per annum from Stevens Creek in Santa Clara County for irrigation and domestic purposes, diversion to be made at Stevens Creek Reservoir, a surface storage reservoir of 4,000 acre feet capacity located a short distance above where this stream debouches into the valley. As in the case of Application 7140 described above this surface reservoir will be used as a regulator within which to conserve the flood crests which will be released to charge the ground water basin underlying the District. Recovery will be made by private pumping plants, or those of public agencies other than the District which represent groups of users within the District. The water thus recovered will also be used for irrigation and domestic purposes on 133,000 acres of land within the Santa Clara Valley Water Conservation District.

Under Application 8388 the Santa Clara Valley Water Conservation District proposes to appropriate 5,000 acre feet per annum from Coyote River in Santa Clara County for irrigation and domestic purposes, the storage to be accomplished at the so-called "Coyote Percolation Reservoir" (capacity 75 A.F.) located between the Narrows and the Lower Gorge where percolation to the ground water basin underlying the District will be induced by a collapsible dam some 10 feet in height and 150 feet in length on the crest. No surface storage is contemplated. This reservoir will fill and empty many times during the season and recovery and use as proposed under Applications 7140 and 7143 is contemplated.

These three applications are part of a group of eleven applications of the Santa Clara Valley Water Conservation District, three of which applications have previously been approved, involving storage on Guadalupe, Los Gatos, Almaden and Calero Creeks, in addition to Stevens Creek and Coyote River, by

spreading flood crests upon receptive areas for later recovery by the users, this in some cases to be accomplished in conjunction with surface storage regulators and in other cases by direct spreading.

PROTESTS

The property of H. L. Haebl, one of the protestants against the approval of Application 7140, lies within the Laguna Seca Reclamation District. The property is located about one-half mile westerly of the town of Coyote, just outside of the southerly boundary of the Santa Clara Valley Water Conservation District and just above and to the west of the so-called "Lower Gorge" on the Coyote River. Whenever necessary water is pumped for irrigation during the months April to November from the ground water fed by the Coyote River but during the period from about December to April the land requires drainage and reclamation from seepage induced by natural seepage from Coyote River. Mr. Haebl alleges in effect that the development proposed by applicant on Coyote River will increase the percolation to ground water to such an extent that his lands will become water-logged and reduced to a swamp or lake with resulting irreparable injury to him. He indicates, however, that the protest may be dismissed if an appropriate by-pass channel is constructed from a point on Coyote River easterly of Madrone to a point within the applicant District, and adequate and satisfactory provisions are incorporated in the permit, based upon prior investigations, to insure protection to his property against an increase in the ground water levels or the material decrease of such levels.

Subsequent to the hearing protests were filed against the approval of Application 7140 by the following:

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| ✓ Otto Gordon | ✓ Mrs. Adeline Stevens |
| ✓ Benedetto Martella | ✓ H. R. Harris |
| ✓ Mr. and Mrs. J. F. Viarra | ✓ A. Saltalamachia |
| ✓ A. R. Costa | ✓ M. F. Costa |
| ✓ Mrs. Ada J. Patton | ✓ N. D. Scimeca < Scimeca |
| ✓ Andrew Patton | ✓ George R. Gube |
| ✓ Edward I. Henderson | ✓ J. C. Hansen |
| ✓ P. A. Walsh | ✓ P. A. Walsh (Lessee) |
| ✓ Geo. B. Cushing | ✓ Stefano Puppo |
| ✓ S. E. Kyle | ✓ G. P. Blaine |
| ✓ Joseph L. Puppo | ✓ Frank Brown |
| ✓ Matilda Oberg | ✓ E. A. Barker |
| ✓ Douglas H. Sim | ✓ O. E. Rouse |
| ✓ Frank J. Polak | ✓ John Magionealdas X |
| ✓ Philip and G. Turtierici | ✓ Bert Wyman |
| ✓ Worcester Bros. | ✓ Estate of H. H. Chester |
| ✓ Ramelli Ranch, Inc. | |

These protestants own lands outside of the boundaries of the Santa Clara Valley Water Conservation District between Madrone and Coyote. They object to the proposed diversion from Coyote River under Application 7140 unless or until some definite plan be devised, agreeable to them, whereby their underground water supply will be protected and preserved as in a state of nature.

Jane C. Wool, F. G. Wool Packing Company, J. Japson and E. S. Brown claim rights to the waters of Coyote River by virtue of riparian ownership and use for irrigation purposes. These protestants allege in effect that should Applications 7140 and 8388 be approved it would result in depriving them of water for irrigation purposes during the winter and spring months and would force them to obtain water elsewhere at an increased cost; also that fertilization of their soil would no longer occur as it has in the past through irrigation with water heavily laden with silt.

These protestants with the exception of Jane C. Wool agree to dismiss their protests provided the canal from the proposed dam on the Coyote River east of Madrone to the percolating beds in the Coyote River near Coyote, is immediately constructed as contemplated.

Lida Leib Armstrong, Elna Leib Wright, Frank A. Leib and R. G. Leib

claim rights to the use of water from Stevens Creek based upon riparian ownership and appropriations initiated prior to the effective date of the Water Commission Act.

These protestants claim substantially all of the surface flow of Stevens Creek at their point of diversion, which is located south of the intersection of Stevens Creek with the Stevens Creek Road, except such water as may pass in time of flood, and also such subsurface flow as can be obtained by their diversion works for the irrigation of some 160 acres of land and for domestic purposes. Also from time to time they pump water for the use of a public utility distributing water for domestic purposes in the Cupertino area and for a third party for the irrigation of his orchard when there is an excess. These protestants allege in effect that use of water as proposed under Application 7143 would result in depriving them of water to which they are entitled. They state, however, that their protests may be dismissed provided that (1) applicant be permitted to appropriate only such waters as would, except for such appropriation, be wasted into San Francisco Bay, and (2) applicant not be permitted to restrict, diminish or affect the flow of any waters, other than waste waters, in Stevens Creek so as to prevent them from reaching protestant's dam.

Mrs. A. M. and Louis Stockmeir, Kay Spence, John Pacheco, George

Bernhard and Antone Picchetti claim rights to divert from Stevens Creek which rights are based upon riparian ownership and appropriation initiated prior to the effective date of the Water Commission Act. They allege in effect that the proposed diversion under Application 7143 would so change the regimen of Stevens Creek that it would result in making them dependent upon the will and convenience of others for adequate releases under the present wording of the application. These protestants request that Paragraphs 2b and 4 (continued)

of the supplement to Application 7143 be amended as follows:

"Strike from the first paragraph of said supplement the following words 'The release from surface storage will be spread upon receptive areas within the natural stream channel below, and outside of the natural stream channel within the boundaries of Santa Clara Valley Water Conservation District', and insert in lieu thereof the following words: 'All water impounded in said surface storage will in due course each year be released therefrom directly into the natural channel below said dam and there spread upon the receptive areas within the length of said channel in such manner that all of such areas will so far as reasonably possible be at all times kept saturated. All water released in excess of that quantity required to accomplish such saturation will be spread upon receptive areas within said district lying outside of said channel.'"

Protestants state that if the substitution proposed above is adopted by applicant their protests may be dismissed.

At the hearing protests were filed by the following Stevens Creek water users and entered as Exhibits 14 and 15:

Irene Davis
G. B. M. Aransen
A. V. Picchetti*
Herbert Pash
Albert A. Olsen
Grant Barton
Spasajo M. Chuck
N. Radovich
A. G. Damico
Elisabeth McDonald

Kay Spence*
August Baratta
George M. Bernhard*
W. B. Calvert
Emma Olsen
E. Gasich
J. N. Lucich
H. R. Heid
John Pacheco*

* Previous protest filed.

These protestants, who are owners of property bordering Stevens Creek below the Stevens Creek Reservoir, object to the method of regulation of flow as proposed by applicant, alleging that the amount which applicant proposes to impound in any one year is excessive, and that the operations of the applicant will render the water in Stevens Creek unfit for domestic use during the mid-summer months. To insure protection of their interests they ask that the District be required to establish and maintain such recording devices as may be

necessary to determine the amount of water impounded and the amount released, that these records be open to the public, and that the amount of water impounded in any one year be limited to the amount which would otherwise waste into San Francisco Bay. These protestants are also concerned lest the release of water will create a condition of silting in the creek channel which may prevent the former rate of percolation into the gravels of the stream bed.

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

Applications 7140, 7143 and 8388 were completed as required by the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested were set for public hearing in accordance with Section 1a of the Water Commission Act on September 23, 1936, at 10:00 o'clock A.M. in the Supervisor's Chamber, Court House, San Jose, California. Of this hearing applicant and those protestants of record at the time were duly notified.

GENERAL DISCUSSION

Alarm over the continued retreat of ground water led to a request on the part of Santa Clara Valley Water Conservation District that the Division of Water Resources undertake "a general survey of the water resources of Santa Clara Valley" and on January 1, 1930, a cooperative agreement between the parties was signed looking toward a three year investigation. The results of this study were published in 1933 as Division of Water Resources Bulletin No. 42. This bulletin was presented as applicant's Exhibit No. 1.

It is indicated in Bulletin 42 that Coyote River during the years 1902 to 1932 wasted an average of 48,000 acre feet annually into San Francisco

Bay, and that in a normal cycle the average annual waste would approximate 55,000 acre feet, or 3% less than the measured waste in 1931-32 which year was 5% above normal precipitation. With a surface reservoir of 30,000 acre feet capacity as proposed by applicant it was estimated an average of 21,700 to 25,800 acre feet of waste water could be conserved annually, depending upon the rate of diversion of accumulated storage between storms.

The estimate in Bulletin No. 42 for Stevens Creek is that 3200 acre feet wasted into San Francisco Bay during the period January 1, 1930, to March 31, 1933 (Table 14), of which substantially all could have been conserved by the operation of a surface reservoir of 1400 acre feet capacity (p. 47). In 1931-32, which was only 5% above normal precipitation in the valley, it is indicated that there was approximately 2120 acre feet of conservable waste on this stream.

We believe no well informed person doubts that there is waste from Coyote River and Stevens Creek into San Francisco Bay. The protestants made no effort to controvert the estimates referred to above which were cited as a part of applicant's Exhibit No. 1. The concern of protestants appears to be to so condition and restrict the efforts at conservation of this waste by applicant that their own uses will not be interfered with. This the Division has the inclination, and we believe also the authority, to do provided practicable means can be found to accomplish such an end.

The situation on Coyote Res. is most involved. If releases from Coyote River are allowed to flow down the stream as far as the Lower Gorge the percolation to ground water will be so stimulated and increased as most certainly to raise the ground water on the property of protestant H. L. Haebl, and probably to such an extent as to waterlog his lands and make them

untillable. In fact the small releases made last year appear already to have injured his lands.

On the other hand if releases from Coyote Res. are diverted below the reservoir so as to by-pass that part of the stream channel between Madrone and Coyote the replenishment of ground water in this area will be reduced and the overlying land owners will suffer not only from an increased pumping lift but possibly also from lack of available supply.

Both the surface reservoir and the by-pass canal have already been constructed and it is to be expected that the operation thereof will injure one or the other of these two conflicting interests unless a definite plan of operation is carefully worked out and faithfully adhered to. It was agreed at the hearing on September 23, 1936, that representatives of the applicant and protestants would undertake the development of such a plan of operation and that the Division would cooperate in this effort. Steps are being taken toward this end and pending further progress in the matter it is appropriate that the Division should suspend action on Applications 7140 and 8388.

It was indicated at the hearing that the protests of E. S. Brown, J. Jepson, and F. G. Wool Packing Company would not be pressed if the by-pass canal referred to above were constructed, and as for the protest of Jane G. Wool under claim of riparian right it is observed that the District can hope to obtain a right to conserve under these applications only those waters which would otherwise waste. Under the decisions of the courts protestant cannot require that surplus waters continue to waste merely to maintain a convenient diversion level for protestant or to fertilize her lands.

The situation on Stevens Creek is not so difficult. In fact it would appear that all interests can be served by a very simple and practicable method

of operation. It is conceded that there is surplus or waste water and that there is substantially no percolation or diversion below United States Highway No. 101. It is the purpose of applicant to insure a maximum of percolation above this point. Any surplus which is conserved by surface storage can most readily be spread upon receptive areas within the stream channel itself. To accomplish a maximum of such percolation within the stream channel will require that water be spilled into said channel from the reservoir at the maximum rate which the channel has the capacity to absorb. This will afford surface diverters at the least an unimpaired opportunity to take what they are rightfully entitled to divert.

So far as the users of underground water are concerned their interests are exactly those of the District -- namely to insure a maximum of percolation in and adjacent to Stevens Creek. If the District stores only those waters which would otherwise flow to and beyond U. S. Highway No. 101 within the N $\frac{1}{2}$ of S $\frac{1}{2}$ of Section 15, T 6 S, R 2 W, M.D.B.&M., and afterwards releases such storage for spreading upon receptive areas in and adjacent to Stevens Creek the percolation to ground water will be increased rather than decreased. It will be simple to install a continuous recording gage on Stevens Reservoir which will maintain a continuous record of water levels in the reservoir. If the record of this gage indicates no storage accumulation except when the flow in Stevens Creek, after satisfying all prior and existing rights, reaches to or beyond U. S. Highway No. 101, there can be no invasion of such prior and existing rights.

Waters thus rightfully stored are the property of the applicant and we shall not undertake to prescribe what disposition shall be made of them except that they must be used for some useful and beneficial purpose. If the

District chooses to spread a portion of the waste water thus conserved on receptive areas outside of the stream channel we believe this is wholly within its right.

The channel of Stevens Creek might, as feared by some of these protestants, become sealed and less receptive to percolation because of the lack of the disruptive effect of flood flows upon the bed and banks of the stream. If so this condition can be relieved by sudden releases from the reservoir which would cause flash flow, or by cultivation. Self interest on the part of applicant demands that it take whatever steps are necessary to prevent such a condition as these protestants fear. If applicant does not, then it must provide facilities for spreading outside the stream channel or its purpose will be thwarted, and spreading will be of equal benefit for these protestants whether within or without the stream channel. We see no cause for apprehension on the part of these protestants, but if what they fear does come to pass the courts will provide a speedy and adequate remedy.

We see no cause for apprehension on the part of those protestants who urge that the development proposed by this applicant on Stevens Creek might render the midsummer flow unfit for domestic use. The records of stream flow on Stevens Creek maintained by this office in cooperation with the U. S. Geological Survey show that there is little or no flow in Stevens Creek during the summer months. We know of no reason to assume that such flow as occurs would either be improved or impaired by any logical method of operation of this applicant.

SUMMARY AND CONCLUSIONS

There is surplus or appropriable water in Coyote River susceptible of conservation under Applications 7140 and 8388. However, if the storage releases

from Coyote Reservoir are discharged into the river and conveyed through the channel thereof to the District the percolation will doubtless be so great as to injure the lands of Protestant H. L. Haschl by reason of high ground water immediately above the Lower Gorge at Coyote, and if the releases are wholly by-passed through the by-pass canal which has been constructed from immediately below the reservoir to a point below the Lower Gorge the percolation to ground water will be so decreased as to injuriously affect those water users between Madrone and Coyote who draw upon the underlying ground water basin. It is proposed to investigate further the possibility of some arrangement whereby the conditions which would naturally obtain without this appropriation may be maintained. Representatives of the District and of the protestants are attempting to work out this problem in cooperation with the Division. Pending the result of further study action on Applications 7140 and 8388 should therefore be suspended.

There is also surplus or appropriable water in Stevens Creek and no reason to assume that the appropriation proposed under Application 7143 will either result in decreasing the percolation to ground water or impairing the quality of the summer flow in Stevens Creek. The purpose of the applicant would be thwarted if percolation to ground water were decreased and therefore protestants can have no reasonable cause for apprehension on this score. It is in the interests of applicant and protestants alike that the flow be maintained in Stevens Creek to U. S. Highway No. 101 whenever it would otherwise occur but for this proposed appropriation. It will, however, relieve causes for anxiety on the part of protestants and provide a means for readily removing causes of friction which may arise if applicant maintains a continuous record of the water levels in Stevens Creek Reservoir and this the applicant

should be required to do. The use proposed is a beneficial one and the applications should be approved.

O R D E R

Applications 7140, 7143 and 8388 for permits to appropriate water from Coyote River and Stevens Creek having been completed, advertised, and protested, and a hearing upon said protests having been held after due notice to the protestants, and the Division being now fully informed in the premises:

IT IS HEREBY ORDERED that Application 7143 be approved subject to such of the usual terms and conditions as may be appropriate, and subject to the following special terms and conditions to wit:

"(1) Permittee shall install and maintain on Stevens Creek Reservoir a continuous recording gage and obtain and preserve a continuous record of the water levels in said reservoir which said record shall be available for inspection by interested parties in the office of permittee at all times during office hours.

"(2) Storage accumulations in Stevens Creek Reservoir shall be restricted to those waters which would otherwise flow in Stevens Creek to and beyond U. S. Highway No. 101 within the north one-half of the south one-half of Section 15, T 6 S, R 2 W, M. D. B. 24, after the rights now exercised by other users above that point are fully satisfied", and

IT IS HEREBY FURTHER ORDERED that action on Applications 7140 and 8388 be withheld until further order is entered.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 24th day of March, 1937.

EDWARD HYATT, State Engineer

BY HAROLD CONKLING

Deputy

(Seal)

EEB:MP
WES:MP