

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
BEFORE THE STATE ENGINEER AND  
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 12006 of Edward J. Soehnel to Appropriate Water from Wilson Creek, tributary to Cajon Creek, in San Bernardino County for Domestic and Irrigation Purposes.

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Decision A. 12006 D. 602

Decided March 18th, 1949

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION, ON JULY 13, 1948:

Edward J. Soehnel	Applicant
W. P. Rowe	Applicant's Engineer
Salvatore Abbate	Protestant
Monte V. Mathews	Protestant
J. J. Heacock	Associate Hydraulic Engineer Division of Water Resources Department of Public Works for the State Engineer

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OPINION

General Description of the Project

The application was filed with the Division of Water Resources by Edward J. Soehnel on July 24, 1947. It contemplates a diversion of 0.2 cubic foot per second, to be diverted year-round, from Wilson Creek, tributary to Cajon Creek, for domestic purposes and irrigation. The point of diversion is described as lying within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 20, T 2 N, R 5 W, SBB&M, where the San Andreas

fault zone crosses Wilson Creek. Diversion will involve a gravity tunnel, a rock and sand diverting dam 2 feet high and 20 feet long, and 700 lineal feet of 3½ inch pipe line of an estimated capacity of 200 gallons per minute. The proposed place of use consists of 10 acres within the NE¼ of NW¼, 20 acres within the SE¼ NW¼, 5 acres within the NW¼ NE¼ and 25 acres within the SW¼ NE¼ of the above described Section 20. Here 13 acres of alfalfa, 2 acres of orchard, 10 acres of general crops and 35 acres of pasture are to be irrigated, and, at the outset, 2 residences are to be served and 20 head of livestock watered. The present population is reported as 15 persons but subdivision is contemplated, with eventual increase in the number of residences to 40. Irrigation is to extend throughout the year. The applicant disclaims ownership of land at the proposed point of diversion but expects to secure right of access thereto by application to the United States Forest Service.

#### Protests

M. J. Mathews and James Mathews allege that the proposed diversion of water from its natural channel would prevent the future development of their property which they state lies along the source named for approximately ¾ mile, below the proposed point of diversion. They assert a riparian right, and diversion at a point within the NE¼ NW¼ of the Section under consideration. They state that water has been used to the extent of irrigating 10 acres as well as to an unstated extent in connection with mining operations by Strategic Metals and Mines Corporation who lease a portion of the property and have also protested the application.

Salvatore Abbate protests individually and on behalf of Strategic Metals and Mines Corporation of which he is president. He contends that the proposed diversion would interfere with the mining operations in which he is interested, by diverting water from the underground channel upon which the Bernard Quartz Claims

depend, and by curtailing the supply potentially serving the Mathews properties, which the Strategic Metals and Mine Corporation leases. The terms under which the protest may be disregarded and dismissed are that the applicant furnish substantiating proof and guarantee that two thirds of the water will be set aside for the use of H. V. Mathews and Strategic Metals and Mines Corporation, proper allocation to be made by the Division of Water Resources.

#### Field Investigation

The applicant and protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, a field investigation was conducted at the site of the proposed appropriation by an engineer of the Division on July 13, 1948.

#### Records Relied Upon

Application 12006 and all data and information on file therewith.

#### Discussion

Protestants Mathews, according to the investigation, currently divert from a cienega which lies in a different watershed from the one from which the applicant proposes to divert and therefore cannot be injured by the proposed diversion, so far as their present use is concerned. These protestants claim a right to waters of Wilson Creek by virtue of riparian ownership and/or beneficial use by a former owner, Francisco de Luna, prior to 1912; such right extending to and including use of water upon the property leased by them to Strategic Metals and Mines Corporation. According to the information adduced Protestants Mathews are not using waters of Wilson Creek currently, nor is there any indication that such water has been used on their property in recent years. Prospective future use by virtue of riparian ownership, under the policy of this office, is an insufficient reason upon which to base a protest against an application to appropriate. As to these protestants' claim of a prior appropriative right to

the use of water issuing from Wilson Tunnel which, it develops, is the point at which the present applicant proposes to divert, such rights, according to the judgment referred to in the report of investigation, passed from Francisco de Luna (the protestants' predecessor-in-interest) to Muscoy Water Company in 1906, and appears subsequently to have been abandoned by that company. Inasmuch as Protestants Mathews' present diversion does not appear threatened by the proposed diversion from Wilson Creek and inasmuch as these protestants appear to have lost their appropriative claim to waters issuing from Wilson Tunnel, the grounds upon which this protest are based do not appear to be valid. The protest of Monte V. Mathews and James W. Mathews against the application is therefore dismissed as insufficient.

Present use by Salvatore Abbate and/or by Strategic Metals and Mines Corporation, alleged to be affected by the appropriation sought under Application 12006, is reported to be limited to pumping from a certain well into a tank which supplies a two room cabin, used but occasionally. That well is said to be 63 feet deep and to have had 11 feet of water in it on the date of the investigation (July 13, 1948). On the same date water was issuing from Wilson Tunnel at the rate of about 3 gallons per minute, but that outflow disappeared within a distance of 300 feet. This circumstance coupled with the reported fact that the well is located in a draw on the opposite side of a ridge from Wilson Creek points to the probability that the appropriation of waters at Wilson Tunnel will not affect the supply afforded by the well. Furthermore, rights possibly once held by the Mathews' predecessor in interest to waters developed at Wilson Tunnel, appear to have passed to Muscoy Water Company and then to have been abandoned, as mentioned in the last preceding paragraph. For the reasons outlined, the protest by Salvatore Abbate is considered to lack valid ground and that protest is accordingly dismissed, as insufficient.

The experience of Muscoy Water Company years ago in developing up to a reported 25 inches at Wilson Tunnel indicates that the same source will probably yield water again. Inasmuch as the data disclose no discernible right as attaching to waters from this source no reason remains for denying the appropriation sought in this instance. Application 12006 therefore should be approved and permit issued subject to the usual terms and conditions.

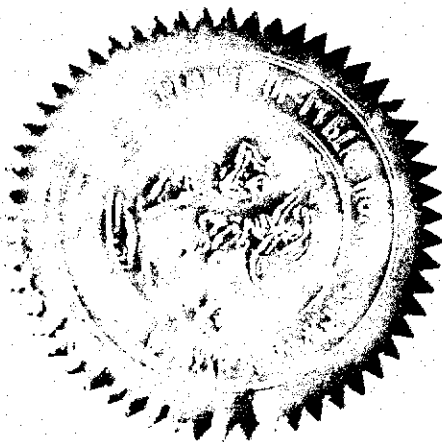
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ORDER

Application 12006 for a permit to appropriate water having been filed, a field examination having been held in accordance with Article 13, Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 12006 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 18th day of March, 1949.



  
Edward Hyatt, State Engineer