

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 Applications 12384 and 12385 by Archie A. Washburn to
Appropriate Water from Unnamed Washes Tributary via Van Meter and Keyes
Creeks to San Luis Rey River in San Diego County for Irrigation Purposes.

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Decision A. 12384, 12385 D. 679

Decided SEP 29 1950

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APPEARANCES AT HEARING HELD AT SAN DIEGO, FEBRUARY 16, 1950:

For the Applicant

Archie A. Washburn

No appearance

For the Protestants

Carlsbad Mutual Water Company

(Ray C. Eberhard, Attorney
(Sam D. Fraser, Secretary and
(General Manager
(C. G. Waters, Jr., Engineer
(

Irving Salomon

Joe W. Matherly, Attorney

Fallbrook Public Utility
District

(Phil D. Swing, Attorney
(George F. Yackey, General
(Manager

Pearl Jones

No appearance

R. L. Johnson and/or)
Katherine (Kate) Johnson)

No appearance

Harry C. Arthur III

Phil D. Swing, Attorney

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of
Water Resources, Department of Public Works, for
A. D. EDMONSTON, State Engineer.

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OPINION

General Description of the Proposed Developments

Application 12384 contemplates the appropriation of 13 acre feet per annum, for irrigation purposes. The water is to be collected between November 1 and May 1 of each season. The point of diversion is an earth impounding dam 110 feet long by 6 feet high located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T 11 S, R 1 W, S.B.B.&M. The resultant reservoir is to have a surface area of 2.2 acres and a capacity of 13 acre feet.

Application 12385 contemplates the appropriation of 2 acre feet to be collected during the same period behind an earth dam 20 feet long by 6 feet high, located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of the same Section 9. This dam is to create a reservoir 0.5 acres in surface area and 2 acre feet in capacity.

The sources of the two appropriations are unnamed washes tributary to Van Meter Creek and thence in turn to Keyes Creek and San Luis Rey River. Water is to be conveyed from the two reservoirs to a common place of use through 6 inch steel pipe lines, 1000 feet and 2600 feet long, respectively. The place of use is an 80 acre citrus orchard which occupies the E $\frac{1}{2}$ SW $\frac{1}{4}$ of the same Section 9. Irrigation is to extend from about May 1 to about December 1. The land to be irrigated has a source of water supply other than that currently applied for, i.e. a supply obtained from wells.

Protests

The Fallbrook Public Utility District protests both applications, contending that the diversions therein proposed, in addition to other diversions from San Luis Rey River under prior rights, will reduce

the amount remaining in that stream below the amount reasonably necessary to the protestant district and its inhabitants; and will bring into operation restrictions upon its own right to divert from the same stream.

The protestant bases its claim of right to divert from San Luis Rey River upon prior appropriation and prescription. It asserts that 2500 acre feet were diverted during 1947 and estimates that as development proceeds under Application 8156, Permit 5227 the total will rise to 5000 acre feet. The protests, the protestant states, may be disregarded and dismissed if the applications are withdrawn or dismissed.

The Carlsbad Mutual Water Company protests both applications, contending that the proposed diversions will deplete the flow reaching its riparian land on San Luis Rey River and its point of diversion. It apprehends also that the proposed diversions may reduce the flow reaching Mission Basin to an amount insufficient to prevent intrusion of sea water, ruinous to its present water supply. This protestant bases its claim of a right to use waters of San Luis Rey River upon riparian ownership of 1100 acres in Sections 17, 18 and 19 of T 11 S, R 4 W and in Sections 13 and 24 of T 11 S, R 5 W, upon an ancient appropriation, and upon an appropriation under Application 8205. It asserts that its use of water extends year round, that its place of use is Carlsbad, an area of 2000 acres, inhabited by 5000 people, wherein water is used for domestic, irrigation and recreational purposes, that the amount used during 1947 was 3223 acre feet, and that its diversion heads within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, T 11 S, R 4 W. It states that its protests may be disregarded and dismissed if the applicant's diversions are limited to years of abnormal streamflow and to periods when Mission Basin is completely charged, provided also that any permit granted the applicant be made subject to

protestant's rights, including rights under Application 8205.

Irving S. Salomon protests both applications, claiming that all of the surface flow and much of the underground flow of Keys Creek has been beneficially used on his riparian lands, such water having been used for domestic purposes, stock watering and irrigation on lands within Sections 17 to 21 and within Section 28, T 10 S, R 2 W, S.B.B.&M. He contends that the diversions proposed by the applicant will materially interfere with the use of his own supply. He claims a water right by virtue of riparian ownership, appropriation and prescription.

Pearl Jones protests Application 12384 only. She claims that her land has been using 100 acre feet of water annually since 1900, her diversion heading within Section 17, T 11 S, R 4 W, S.B.B.&M. She claims a riparian right and contends that the applicant's proposed diversion will deplete the flow reaching her land and may result in insufficient water reaching Mission Basin to prevent intrusion of sea water.

R. L. and Katherine (Kate) Johnson protest Application 12385, claiming that their land has been using 320 acre feet, more or less, per annum for domestic purposes and irrigation, since prior to 1874, and that their diversion heads within Section 5, T 11 S, R 4 W. They assert a riparian right and contend that the applicant's proposed diversion will so reduce the flow of the stream as to allow sea water to intrude into Mission Basin, thereby ruining their water supply.

Harry C. Arthur on behalf of himself and co-owners protests Application 12385. He contends that the diversion proposed by the applicant will substantially reduce the streamflow heretofore available, that he (and co-owners) are wholly dependent upon San Luis Rey River for a water supply for domestic use and irrigation, that there is no excess

water in that stream available for appropriation, that the proposed diversion will so diminish stream flow as to permit intrusion of sea water into Mission Basin and that approval of the application will cause long and expensive litigation. He bases his claim of right to use of water upon riparian ownership and rights of overlying owners. He states that he diverts approximately at the intersection of the northeasterly line of Lot 1, Rancho Guajome with San Luis Rey River, that an irrigation supply has also been obtained from a well on the property and that additional wells are to be put down in the immediate future with a view to increasing the irrigated acreage by 150 acres and annual water consumption to 900 acre-feet. The protest, he states, may be disregarded and dismissed if the application is withdrawn, dismissed or denied.

Answers

The applicant addressed one answer to the protestants against Application 12384 and another to the protestants against Application 12385. His statements in the two answers are practically identical. He asserts willingness that any permit issued in the matter be restricted to the taking of water at such times as there are not less than 25 cubic feet per second of surface flow in San Luis Rey River at Mission Bridge. He asserts belief that at such times lower Mission Basin and other subterranean basins are being recharged as fast as nature permits and that river water is being discharged into the ocean. He denies that Protestant Salomon has put all of the surface flow or much of the underflow of Keys Creek to beneficial use, but that he (the applicant) has beneficially used on riparian land up to 75 acre feet per year. He contends that all water appropriated but not consumed will pass to the subterranean basins. With reference to the pro-

test by Fallbrook Public Utility District he argues that the restrictions in permits to that district would not be brought into operation more quickly than usual because a permit if issued to him on the terms proposed would authorize diversions only during years of abnormally heavy rainfall and/or at times of high stage.

Hearing Held in Accordance with the Water Code

Applications 12384 and 12385 were completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources, and being protested were set for public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code on Thursday, February 16, 1950 at 10:00 o'clock A.M. in the Board of Supervisors Hearing Chamber, Civic Center Building, San Diego, California. Of the hearing the applicant and the protestants were duly notified.

Motions to Dismiss

At the hearing of February 16, Attorney Eberhard (representing Carlsbad Mutual Water Company) moved (page 4 of transcript) that the applications be dismissed on the ground that there is no showing of the existence of unappropriated water. Attorneys Matherly (representing Protestant Salomon) and Swing (representing Fallbrook Public Utility District and Harry C. Arthur III) introduced similar motions (pages 27 and 29 of Transcript).

Discussion

The applicant did not attend the hearing of February 16 nor was he represented thereat.

Counsel for certain of the protestants moved for the dismissal of the applications because of the applicant's failure to show that unappropriated water exists in the sources filed upon.

In view of the motion for dismissal of the applications and inasmuch as the applicant failed to appear at the hearing or show cause wherefore no appearance was made, it is the opinion of this office that the applications should be denied.

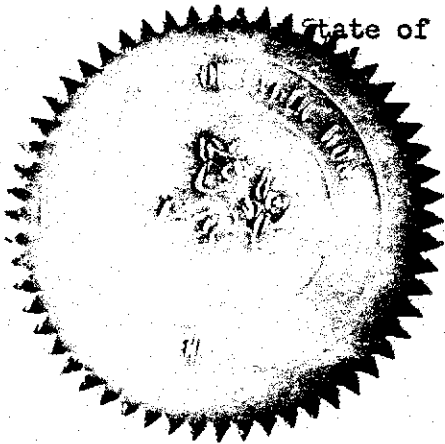
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O R D E R

Applications 12384 and 12385 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 12384 and 12385 be rejected and cancelled upon the records of the Division of Water Resources, without prejudice.

WITNESS my hand and the seal of the Department of Public Works
State of California this 29th day of *September*, 1950.



A. D. Edmonston

A. D. Edmonston
State Engineer