

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

oOo

In the Matter of Application 12857 by Lake Gregory Water Company to  
Appropriate Water from an Unnamed Spring in San Bernardino County  
Tributary via Dart Canyon Creek to East Fork of West Fork of Mojave  
River.

oOo

Decision A. 12857 D. 681

Decided October 24, 1950

oOo

APPEARANCES AT HEARING HELD AT LOS ANGELES ON AUGUST 15, 1950:

For the Applicant

Lake Gregory Water Company

Gordon & Knapp, Attorneys at Law,  
by Joseph C. Gill

For the Protestants

C. W. Carver, et al.

Cosgrove, Cramer, Diether & Rindge,  
Attorneys at Law,  
by J. D. Barnum, Jr.

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

ALSO PRESENT - J. J. Heacock, Associate Hydraulic Engineer,  
Division of Water Resources.

oOo

OPINION

General Description of the Project

The application (as amended) contemplates an appropriation of  
0.011 cubic foot per second, year-round, from an unnamed spring in

San Bernardino County. The spring is described as being tributary via Dart Canyon Creek (sometimes called Dark Canyon Creek) to the East Fork of West Fork of Mojave River. Diversion is to be effected by means of a shored tunnel extending 20 to 50 feet into a water bearing spring area located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, T 2 N, R 4 W, S.B.B.&M. The water is wanted for domestic purposes within the applicant's service area, the latter including part or all of Sections 22, 23, 24, 25 and 26 of the same township. The service area is said to include 3316 lots of which 1947 are deeded, 802 under sale contracts and 567 open for sale.

#### Protest

A protest was filed on May 2, 1949 in the name of Las Flores Ranch. It was signed by Chesney W. Carver and Marjorie C. Weirack. An amended protest, received August 3, 1949 is signed "Owners of Las Flores Ranch by K. L. Carver, for and on behalf of C. W. Carver, K. L. Carver, Marjorie Carver Weirick, Doris Carver Chilcott."

The protest and/or the amended protest allege in substance as follows: That the spring filed upon is tributary via Dark Canyon (Dart Canyon) Creek to East Fork of West Fork of Mojave River; that the Las Flores Ranch owners have riparian and appropriative rights to waters of East Fork of West Fork of Mojave River and tributaries; that in the operation of Las Flores Ranch water from those streams is required and is used beneficially for stock watering and irrigation; and that the applicant's proposed diversion will so reduce the protestants' water supply as to render it insufficient for the protestants' needs.

#### Answer

The applicant denies that the protestant holds any right, title or interest in and to the use of water from the source filed upon.

It asserts that it is a public utility engaged in distributing water to the public generally for domestic use within its service area. It argues that water from the source filed upon if not used as proposed in the application would seep away and be absorbed by the earth with no benefit to the protestants. It alleges that the water in question, after absorption by the earth does not follow any defined stream or channel and that therefore no riparian right can attach to it.

#### Hearing Held in Accordance with the Water Code

Application 12857 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing under the provisions of Article 733(a) of The California Administrative Code on Tuesday, August 15, 1950, at 10:00 o'clock A.M. in Room 803, State Building, Los Angeles, California. Of the hearing the applicant and the protestants were duly notified.

#### General Discussion

According to Water Supply Paper 1090, U. S. Geological Survey, the flow of West Fork of Mojave River near Hesperia (0.5 mile upstream from confluence with Deep Creek) for 17 years (since January, 1930) has averaged 36.2 second-feet. The gaging station at the locality mentioned commands a watershed of 74.8 square miles. Of this watershed approximately 28.9 square miles lie above the protestants' uppermost diversion and 0.6 square mile above the applicant's proposed diversion, as scaled from U.S.G.S. quadrangles of the region. If the yield from the watershed above the protestants' intake averages at least as much per square mile as it does for the watershed above the U.S.G.S. gage- as it probably does in view of relative elevations -  $28.9/74.8$  of 36.2 second-feet or 14.0 second

feet on average should pass the protestants' intake and 0.6/74.8 of 36.2 or 0.29 second-foot should originate within the watershed tributary to the applicant's projected tunnel. Inasmuch as the protestants claim (in their hearing exhibit) to irrigate some 634 acres it is apparent that average annual yield is ample and that water shortage if any that may be occasioned by the proposed appropriation will be limited to the low water months. This the protestants concede in effect in their hearing testimony (transcript, pages 130 and 140).

That the flow of East Fork of West Fork of Mojave River at the protestants' point of diversion is at times deficient - especially from August 1 to September 15 - is established by testimony (transcript, page 140), and is not denied by the applicant. That such shortage would be aggravated by the applicant's proposed appropriation does not follow automatically. It is undoubtedly true in part, as witness Carver testified (transcript, pages 130 and 131), that the stream....is made up of the contributions....of.....springs that are adjacent to the canyon and in its drainage area, but it may well be that not all springs within the drainage area actually so contribute, the yield of certain springs being perhaps lost by evaporation and/or transpiration before reaching the stream channel at all. Consulting Engineer Conkling's testimony (transcript, pages 79-121) is to the general effect that the yield from the spring on which the applicant has filed is lost in large part by evapotranspiration before joining any surface channel drainage. Witness Conkling testified among other things that the water issuing from the spring supported a certain stand of water-loving vegetation, and that test-holes along the course that underflow from the spring would follow proved that no such underflow existed. He testified (transcript, page 90) that in his opinion

the diversion proposed by the application would not affect the protestant's water supply at all. Verbatim extracts of Witness Conkling's testimony as to the degree to which the proposed diversion will affect the protestants' water supply are as follows:

On page 90 of transcript, answering a question asking his opinion as to how long it would take for underground water to travel underground from the proposed point of diversion,

".....it takes several years for water to move through the mountains. Now I don't like to say how many years, but we will say several; at least, more than two; maybe three, for water to move from a point such as the spring underground into the trough there ..... The only time the applicant would have any question would be in the summer, of course, when the discharges are low; but as I say, any subtraction which might occur by diversion of the spring would be ironed out and made up by percolation or precipitation - percolation of floods. So that the effect of the applicant's diversion would be on the floods which disappear down somewhere in the Mojave Basin, but that would be negligible."

Again, on page 91 of transcript,

".....it is a fact that most of the use of water by the applicant is in the household, and that the water comes back to the underground, as stated by Mr. Taylor. He believes that 95 per cent of the water used by the service area of the applicant does go underground by means of cess pools and septic tanks; and in that type of development, that is a fairly good estimate. Now that water, then, would go

underground. In other words, actually you won't diminish the water that goes underground by taking it from the spring, but you may have increased it ...."

On page 93 of transcript in answer to the question, "What percentage, if any, of the flow from the spring at the present time, in your opinion goes to the ground water supply in this watershed?",

"Well....I doubt if there is any under the conditions as they were when I saw it. ....I think the evapo-transpiration losses in the summer take care of all the water."

Again on page 96 of transcript, in answer to the question, "...in the summer months ....would the evapo-transpiration loss be equivalent to substantially the entire flow during those months, in your opinion?",

"Yes, I think it would."

Finally, on page 97 of transcript, in answer to the question, "...in your opinion would more or less water find itself into the ground water supply and to the protestants' point of diversion after this appropriation was made than before?",

"I don't think that it will make a particle of difference in the amount of water that reached the protestants' point of diversion."

In view of all of the circumstances including particularly the U. S. Geological Survey records of stream flow, the distance between protestants' diversion point and applicant's proposed diversion point (some 7 miles), the amount of the proposed appropriation (0.011 second-foot) and witness Conkling's testimony based upon his personal investigation and study, it is concluded that surpluses exist as alleged and that such surpluses may be taken and used in the manner proposed in the application

without injury to the protestants or to other users downstream. The protest is accordingly dismissed as insufficient. Application 12857 should be approved, subject to the usual terms and conditions.

oOo

ORDER

Application 12857 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest 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 Application 12857 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 24th day of October, 1950.



*A. D. Edmonston*  
\_\_\_\_\_  
A. D. Edmonston  
State Engineer.