

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 13016 by Santa Clara Valley Water Conservation District to Appropriate Water from Coyote River in Santa Clara County for Irrigation, Incidental Domestic and Minor Industrial Purposes.

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Decision A 13016 D. 702

Decided April 2, 1951

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APPEARANCES AT HEARING HELD AT SAN JOSE ON AUGUST 23, 1950:

For the Applicant

Santa Clara Valley Water
Conservation District

Herbert C. Jones, Attorney
G. W. Hunt, Chief Engineer
Harvey G. Mitchell, Director
C. G. Spargur, Director
Lloyd Wilcox, Director
W. F. Pfielfle, Director

For the Protestants

City of Morgan Hill

L. D. Bohnett, Attorney
Harold Holden, Attorney
Edward Acton, Councilman
Walter Hanna, Engineer
Harvey Ailkire, City Engineer

Central Santa Clara Valley
Water Conservation District

Dr. Harold Thomas, Director and Chairman
L. D. Bohnett, Attorney
Harold Holden, Attorney
Edward Acton, Director
John Reynolds, Director
Andrew Costa, Director
John B. Paroline
M. J. Bartell
Harold Means
James A. Friebel

Jasper L. Moss

In propria persona

Examiner - Harrison Smitherum, Supervising Hydraulic Engineer,
Division of Water Resources, Department of Public
Works, for A. D. EDMONSTON, State Engineer.

Also present - John Meley, Supervising Hydraulic Engineer,
Division of Water Resources, a neutral witness.

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OPINION

General Description of the Project

Application 13016 contemplates an appropriation of 75,000 acre-feet per annum from Coyote River in Santa Clara County at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of projected Section 10, T 9 S, R 3E, MDB & M. The water is to be collected between October 1 and September 30 of each season and impounded by an earth dam 210 feet in height and 1100 feet in length. The resultant reservoir, to be known as the Leroy Anderson Reservoir, is to be 1050 acres in surface extent and 75,000 acre-feet in capacity. The reservoir is to be utilized as a regulator to hold flood crests which would otherwise waste, pending their recharge into the ground water storage basin underlying the applicant district. It is proposed to accomplish recharge by successive releases from storage which will be conducted to receptive areas both along and away from the natural stream channel and allowed at those areas to percolate into the ground. It is intended that recovery of water stored underground in the manner indicated will be made by private users or by public agencies acting for them, at pumping plants scattered throughout the district. The proposed place of use is described as the 133,000 acres within the Santa Clara Valley Water Conservation District. Of the total acreage mentioned,

orchards are to occupy about 100,000 acres and general crops the remainder. Irrigation is to begin about March 1 and end about November 30.

Protests

The City of Morgan Hill protests the application, representing that the ground water supply upon which it now depends will be diminished or exhausted by the applicant's project. It claims rights to use water from the source in question (Coyote River) based upon use begun prior to December 19, 1914, riparian rights, and rights initiated by the filing of Application 13222 which, though subsequent in date to Application 13016, is, the protestant argues, for a higher use. According to the protest, all water used for domestic and municipal purposes within the City of Morgan Hill is produced by pumping from underlying gravels through three different wells. The point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of projected Section 10, T 9 S, R 3 E, MDB & M. It is explained that waters feeding the protestant's wells originate at that point. The protest may be disregarded and dismissed, it is stated, if satisfactory agreement is reached with the applicant for joint use of water to be impounded, or if other satisfactory supply of water by applicant to protestant is arranged.

The Central Santa Clara Valley Water Conservation District protests on grounds practically identical with those set forth in the protest by the City of Morgan Hill. It states that it diverts within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of projected Section 10, T 9 S, R 3 E, MDB & M, and also diverts all along the bed of Coyote River from the point where that

stream enters Santa Clara Valley to Metcalfe Road. It states that its protest may be disregarded and dismissed under substantially the same conditions as those proposed in the protest by the City of Morgan Hill.

The applicant answers the two protests in nearly identical language. It denies that the flood waters of Coyote River supply or replenish the ground water supply in which the protestants are concerned, contending on the contrary that those flood waters waste into San Francisco Bay. It denies that its proposed appropriation will in any way diminish or affect the protestants' water supply or wells. It denies that the protestants own riparian lands along Coyote River or that the protestants have ever used flood waters or unappropriated waters of Coyote River.

Hearing Held in Accordance with the Water Code

Application 13016 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 13, Section 733(a) of the California Administrative Code on Wednesday, August 23, 1950, in Room B, Civic Auditorium, San Jose, California. Of the hearing the applicant and the protestants were duly notified.

Discussion

Application 13222 referred to in the protest by the City of Morgan Hill (summarized in an earlier paragraph), on that applicant's request, was rejected and cancelled by Division Order dated February 19, 1951. The City of Morgan Hill on November 20, 1950, filed Application 14062 to appropriate 3.35 cubic feet per second year-round from Coyote

River at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of projected Section 10, T 9 S, R 3 E, MDB & K. Notwithstanding its withdrawal of Application 13222 the City of Morgan Hill has not withdrawn its protest against Application 13016.

The protestants against Application 13016 concede that a portion of the flow of Coyote River wastes into San Francisco Bay and they are at pains to explain that they are not opposed to the diversion by the applicant of water that so wastes. They object, however, to the diversion of waters which in a state of nature would percolate into the gravels from which they derive their supply. Thus Attorney Bohnett (representing the protestants) stated (Transcript, page 90):

"Our position on this: Admittedly there is water that runs to waste there . . . our position on that particular point . . . is, all of the water that enters into the valley . . . does not run to waste. That is, that at the time of flood due to the great pressure of having the greater volume of water and due to the fact that the greater volume of water rolls the gravel, washes out the sediment, that there is a very definitely greater percolation during flood time than at lower flows. And that that part of the water is appropriated, that part of the water is being put to beneficial use. Now, if the floods are impounded and we do not get the benefit of that extra percolation due to flood waters, the only way that the district can be recompensed is for it to have a longer flow upon the stream bed. In other words, that the applicant be required to release that water down the stream bed and thereby restore the balance of percolation."

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" . . . just an unconditional permit wouldn't protect us. It would force us into court to protect our rights . . . Unless the permit requires the permittee to protect that percolation we'd be forced into the courts . . ."

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" . . . I would suggest that the condition be included in the permit that the released waters be carried down the channel of the creek."

Apropos of the protestants' position as outlined in the preceding paragraph, the applicant's attorney stated (Transcript, page 101):

"Now the law of course is quite plain that the wasteful use of water since the 1928 amendment is no longer tolerated to have a pressure flow in order to press water into the bank. It's a wasteful use of water."

In the same connection the applicant's engineer testified (Transcript, page 101 et seq.):

" . . . We take water out of the Anderson Dam at the present time. We do not directly divert it into the canal. That flows down the stream a number of thousand feet at the very top of the cone and that entire area is being benefited much more than they could ever claim for the reduction of flow or rolling of gravel or anything else . . . You get the benefit of all our stored waters carrying over those thousands of feet, carrying over the top of the cone . . ."

With reference to the canal mentioned the same witness testified in effect. (Transcript, page 103) that its length from intake (below Anderson Dam) to Metcalfe Road is approximately 10 miles, that culverts are provided to carry intersecting drainage either under or over the canal, that the canal is not operated during rainy weather, that it is equipped with gates which stand open all winter, and that the object of the culverts and gates is to keep the canal dry in wet weather and so prevent erosion.

Testimony by witnesses in connection with the protest by the City of Morgan Hill is to the general effect that wells in the vicinity of that city are fed by percolation from Coyote Creek. Witness Acton's testimony (Transcript, page 128) included the reading of the following passage from page 69 of U.S.G.S. Water Supply Paper 519 (Ground Water in Santa Clara Valley, California):

"The area covered by the following estimates consists of that part of the Santa Clara Valley lying north of Maple Avenue, just south of Tennant, and south of the lower gorge. It comprises the fan of Coyote Creek and several smaller fans and has an area of about 13,000 acres . . . About 80 per cent of the ground water of the area thus defined is believed to have its source in percolation from Coyote Creek."

Witness W. J. Hanna (city engineer of Morgan Hill) testified in effect that the population of Morgan Hill is around 1625, that the City has a water right in a spring just north of Coyote Creek below the Anderson Dam, that in the early days that spring supplied the City, and that a 4-inch main was built to carry and distribute water from that spring. He testified that that main was connected to the City mains but he testified also:

"Now they are using that work backwards to supply the people that were ordinarily originally supplied from that spring along the road."

Witness Hanna testified that in his opinion, based on observation and on consideration of relative elevations, the wells supplying Morgan Hill are fed from Coyote River.

The situation presented by Application 13016 is closely similar to that presented by Application 7140 by the same applicant, to divert from the same source for the same general purpose. Application 7140, seeking an appropriation of 40,000 acre-feet per annum to be collected at Upper Coyote Reservoir (some 6 miles upstream from Leroy Anderson Reservoir) was approved and the project is in operation. According to Decision 400, written in connection with Application 7140, waste of water from Coyote River into San Francisco Bay was recognized, the protestants' main concern was that conservation efforts under that application be conditioned and restricted sufficiently to safeguard their interests, and the Division undertook to provide approximate safeguards in the form of special permit clauses. The situation in Coyote Valley was recognized as being extremely involved, the release of too much water down the natural channel threatening waterlogging on the one hand and on the other hand the by-passing of stored water through an artificial canal threatening to reduce too severely the percolation from Coyote River upon which the protestants mainly depend.

The Coyote Reservoir and appurtenant facilities have been operated by the applicant District since they were first put into operation in 1937.

It appears that under the plan of operation followed the District during periods of natural flow has stored only such water as was in excess of the amount required to reach the mouth of Coyote River near Alviso. This plan has provided a substantial flow past the protestants' lands during times of flood and the natural flow of the stream at all other times. Furthermore the applicant District's stored waters have been subject, when released from storage, to percolation over the mile or more of Coyote River channel extending from the Upper Gorge (opposite Madrone) to the applicant's canal intake.

In response to representations that operations of the permittee under Application 7140, Permit 5061, had adversely affected percolation in the Coyote Valley, the Division made an analysis of percolation conditions as revealed by the records furnished by the permittee pursuant to one of the permit conditions. The results of that analysis are set forth in "Office Report re Application 7140, Permit 5061 -- Analysis of Percolation in Coyote Valley as Affected by Operation of Coyote Reservoir and Canal," prepared March 30, 1949, by Paul E. Stephenson, Senior Hydraulic Engineer. The report covers records for the seasons 1916-17 to 1944-45. Analysis of the records for the seasons 1945-46 to 1948-49 received subsequent to the report, supports the conclusions contained in the report. The final conclusion of the report reads:

"It appears that the Santa Clara Valley Water Conservation District has operated its facilities . . . without impairment of the percolation from Coyote Creek in Coyote Valley, in accordance with the terms and conditions of said permit."

Leroy Anderson Reservoir is located at the so-called "Upper Gorge," opposite Madrone, some 6 or 7 miles below Coyote Reservoir. Water released from Leroy Anderson Reservoir, both natural flow and stored water, will traverse the same stretch of river channel and will have the same opportunity to percolate under the protestants' lands as did water which reached the Upper Gorge before Leroy Anderson Dam was built.

Analyses of the records of operation of Coyote Reservoir and Canal indicate that there has been no impairment of percolation under the plan of operation followed for that reservoir pursuant to the special conditions in Permit 5061. The applicant argues that the physical opportunity for percolation has not been changed and that continued operation under the plan followed for Coyote Reservoir will automatically result in bypassing sufficient water through Leroy Anderson Reservoir to avoid impairment of percolation to the protestants' lands; also that the longer periods during which stored water will be released down Coyote River will offset any advantage that the protestants claim the unregulated passage of floods would afford. On the other hand the protestants assert that the peak floods which now pass Upper Gorge and which they contend are far more advantageous than lesser flows for longer periods will be cut off under the scheme of operation which the applicants propose. Similar arguments were advanced in the matter of Application 7140. The similar conditions obtaining in the matter of Application 13016 suggest that that application be handled in like manner, i. e. by the inclusion of appropriate special clauses in such permit as may be issued.

Summary and Conclusions

Unappropriated water exists in Coyote River which may be conserved for beneficial use in the manner proposed in Application 13016, which application therefore should be approved. However, if releases from storage are at all times conveyed down the natural channel of Coyote River waterlogging of low lying lands may result and if releases are at all times bypassed around that natural channel ground water supplies, fed heretofore by percolation from Coyote River, will be depleted, and lands dependent upon such supplies will be injured accordingly. It is incumbent upon the applicant to ensure by proper reservoir operation and conduit operation that its utilization of water from Coyote River will not cause water-logging on the one hand nor denial of normal percolation opportunity on the other. The permit issued in the matter of Application 13016 should contain clauses requiring (1) that the permittee shall maintain such records as, in the discretion of the Division, may be necessary to establish the amount of percolation occurring between Leroy Anderson Dam and the northwesterly boundary of Central Santa Clara Valley Water Conservation District, and its local distribution, and furnish copies of such records at prescribed intervals to the Division; (2) that the storage and diversion facilities shall be so operated as to avoid any substantial increase or decrease in the annual increment to the underground water supply which would occur in the absence of said facilities in that portion of the channel of Coyote Creek extending from Leroy Anderson Dam northwesterly to the boundary of Central Santa Clara Valley Water Conservation District; and (3) that the Division of Water Resources shall maintain continuing jurisdiction over the permit to ensure fulfillment of these requirements.

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ORDER

Application 13016 for a permit 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 State Engineer now being fully informed in the premises:

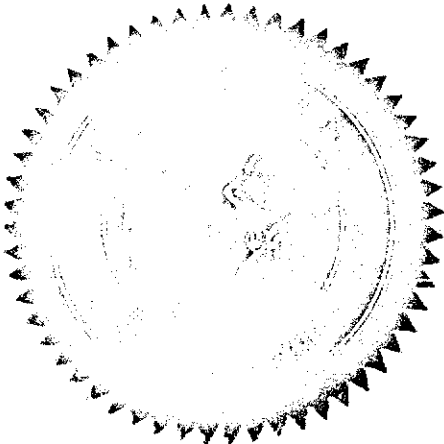
IT IS HEREBY ORDERED that Application 13016 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate, and subject to the following special terms and conditions, to wit:

1. Permittee shall maintain such records of well levels and of storage, streamflow and canal diversions as, in the discretion of the Division of Water Resources, may be necessary to establish the amount of percolation which occurs between Leroy Anderson Dam and the northwesterly boundary of Central Santa Clara Valley Water Conservation District, and the local distribution thereof. Said records shall be maintained by years extending from October first to the following September thirtieth or by such other twelve-month periods as the permittee may prefer to adopt, and the permittee shall furnish copies of such records for each such year to the Division within ninety days of the close of such year.
2. The storage and diversion facilities shall be so operated under this permit as to avoid any substantial increase or decrease in the annual increment to the underground water supply which

would occur in the absence of said facilities from that portion of the channel of Coyote Creek extending from Leroy Anderson Dam northwesterly to the boundary of Central Santa Clara Valley Water Conservation District.

3. The Division of Water Resources shall continue jurisdiction over this permit and shall if necessary modify its provisions, to insure that operation thereunder is consistent with the above last named condition.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 2nd day of April, 1951.



A. D. Edmonston
A. D. Edmonston
State Engineer