

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 14376 by Clifford W. Wilson to
Appropriate Water from Storm Drain Canal from Patton Hospital
Estates, Tributary to Warm Creek, in San Bernardino County,
for Irrigation Purposes.

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Decision A. 14376 D. 769

Decided December 29, 1952

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Appearances at Hearing Held at San Bernardino on May 21, 1952

For the Applicant

Clifford W. Wilson In propria persona

For the Protestants

Orange County Water District	Rutan, Tucker, Howell & Tucker, by H. Rodger Howell
Riverside Water Company	Best, Best & Krieger, by James H. Drieger
Meeks and Daley Water Company	No appearance

EXAMINER - GORDON ZANDER, Assistant State Engineer, for
A. D. EDMONSTON, State Engineer.

Also present - J. J. Heacock, Senior Hydraulic Engineer,
Division of Water Resources, Department of Public Works.

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OPINION

General Description of the Project

The applicant seeks to appropriate 0.15 cubic foot per second, year round, for irrigation purposes, from a source referred to as "Storm Drain Canal from Patton Hospital Estates," tributary to Warm Creek, in San Bernardino County. The water is to be diverted at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T 1 N, R 3 W, SBE&M, by pumping, at a rate not in excess of 1.5 cubic feet per second, and applied directly to a 10-acre orchard and 2 acres of pasture, within the same quarter-quarter section as the proposed point of diversion. According to the application the place of use has no other water right or source of water supply.

Protests

Orange County Water District protests that the diversion proposed by the applicant will result in injury to lands within its boundaries. In this connection it asserts in effect that it (the District) is some 170,000 acres in extent, that its lands lie within the Santa Ana River watershed, that all of the flow of the Santa Ana River and its tributaries including the source named by the applicant has long been appropriated, that the applicant's proposed diversion would create a deficiency of supply, and that rights within Orange County Water District include riparian and appropriative rights and rights to underground waters stemming from the ownership of overlying lands. It further states in its protest:

"Use of water under the rights above stated began as early as 1876 and extended rapidly until, at the present time and for several years last past, the entire supply which reaches Orange County at the lower end of the river is in beneficial use. The uses to which the water is put are agricultural, domestic, municipal and industrial. The diversions are continuous the year around. During the irrigation season the surface flow in the river is diverted directly for that purpose by two large canal systems. During the remainder of the year, during periods when all the surface flow is not so diverted, the flow in the river sinks underground naturally to recharge the underground waters beneath the lands within the District where it is in part stored until pumped from wells to serve all the various activities of the highly developed communities on the coastal plain in Orange County. The natural percolating capacity of the river channel in the Orange County Water District is being maintained by the District through the construction of artificial spreading works as conditions change with the diminishing flow in the river.

"The Orange County Water District by and through the protest represents many landowners within the boundaries of the District who are now and for many years last past have been applying the water hereinbefore set forth through various points of diversion extending from the northern boundary of the District in Orange County, California, to the southern boundary of the District in the same County, for useful and beneficial purposes upon said lands."

Riverside Water Company through its attorneys protests the application, stating in support of its protest,

"1. All of the water of the Storm Drain Canal from Patton Hospital Estate is tributary to Warm Creek and an integral part of the water which has for many years been and now is appropriated and put to beneficial use by the Riverside Water Company.

"2. The protest of the Riverside Water Company is based upon the constant use of the entire flow of Warm Creek and its tributary, including the Storm Drain Canal . . . Protestant's use of said flow has been continuous since 1884.

"3. Riverside Water Company has used the entire flow of Warm Creek and its tributaries which reaches its point of diversion for irrigation purposes only, and said use will continue indefinitely to serve the irrigated land hereinafter referred to.

"4. Riverside Water Company uses the water herein-
above sought to be appropriated on approximately 8,000
acres of irrigable land in the County of Riverside, State
of California, and more particularly in and around the
City of Riverside. The point of diversion of said water
is on Warm Creek in the County of San Bernardino just
north of the confluence of said Warm Creek with Santa
Ana River.

Meeks and Daley Water Company protests that the diversion
proposed by the applicant would diminish the surface flow of Warm
Creek which is already inadequate to supply its (the protestant's)
right. It claims a water right based upon use begun prior to
December 19, 1914. It describes its point of diversion as being
located in San Bernardino County at the point where the east-west
center line of Lot 28, Block 54, Rancho San Bernardino, intersects
the easterly boundary of that lot, states that water was first used
in 1847 and that in recent years 850 miner's inches have been used,
beneficially, in irrigating citrus and other agricultural lands.

Answers

The applicant by letter dated November 5, 1951, states in
effect that the ditch (presumably the source filed upon) borders his
land, that it comes to him directly from the Patton Estates, that the
Patton Estates approve his proposed use of the water, that in his
opinion the water can be used more advantageously on his property
than at downstream points, and that water which passes his place
"definitely disappears in the deep sands."

Hearing Held in Accordance with the Water Code

Application 14376 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, Title 23, Waters, on Wednesday, May 21, 1952, at 2:00 o'clock P.M., in the City Council Hearing Chamber, San Bernardino, California. Of the hearing the applicant and the protestants were duly notified.

Discussion

The substance of the hearing testimony is as follows:

Clifford W. Wilson, the applicant, testified (Pages 7 to 28 of transcript) to the effect that he needs water, that his well has gone dry due to the drilling of some deep wells above him, that ground water levels of the locality have subsided, that the water he is seeking to appropriate flows on the surface but goes back into the ground, that the use he proposes is non-consumptive, that the small quantity he is seeking wouldn't get very far or benefit the protestant water companies, that his well has been failing for 3 years, but failed completely in 1951, and that due to well failures he and his neighbors have been using water from the ditch. He testified further that water is plentiful now but is scarce in summer, that he "would rather pump good clear water than fool around with the mud out of that ditch," that it is his intention to drill a new well when he can. On cross examination he testified that the storm drain comes to him from the northeast, that during the irrigation season

it carries waste water, that when the flow is considerable it reaches Warm Creek but at other times it sinks in the sand, that it might reach Warm Creek also by flowing underground, that waters of Warm Creek have been used by others for many years, that he doesn't challenge the right of the other users but seeks a permit to share with them, that he has owned his ranch for 3 years, that when he bought it the well was producing about 20 miner's inches. On cross examination he testified further that he pumps from the storm drain with the aid of a check which however the water flows over, that the general slope of the locality is to the south and west, that he spends 10 per cent of his time on the place he is seeking water for, and the rest of his time on other farm properties, that he has observed the flow in the storm drain frequently, at all times of year, that there is lots of water in winter, that he prefers well water to ditch water, that if his well was functioning he would not be pressing his application, that the ditch across his property is cement lined, that the lining extends only across the Patton property and across his own property, that the lining ends in a sandy level place and the water sinks within 20 feet, into the sand, that the water in the drain is runoff from upstream irrigation, that the drain is often dry toward the end of summer, that about half of his property was planted before May, 1951 and the other half afterward and that the newer plantings were made after the well went dry.

Paul Bailey, Consulting Engineer, a witness for and on behalf of the protestant Orange County Water District, testified (Pages 30 to 48 of transcript) to the effect that his studies on the Santa Ana River Watershed

have been fairly continuous since the early 20's, that he is acquainted with Warm Creek and with the Patton storm drain, that he examined the latter on May 15, 1952, that the drain as it skirts the northerly edge of the Wilson property is concrete lined, that the drain joins another concrete-lined channel below the Wilson property, that the latter channel flows southerly and empties into an apparently natural channel leading to Warm Creek, that the flow into Warm Creek was considerable, that the direction of its flow was westerly, i.e. toward the city of San Bernardino. Witness Bailey testified further that Warm Creek is a "rising stream," that its channel is continuous, that it enters Santa Ana River, the latter flowing westerly toward Orange County, that the flow in the Patton storm drain on the Wilson property, if not diverted would reach Orange County, that the Santa Ana River is the principal source of water supply for lands within the Orange County Water District, that the water supply available to such lands is inadequate, that such lands are largely underlain by ground waters, that for more than 7 years these ground waters have been seriously overdrawn despite vigorous efforts to conserve water and develop additional supplies, including the importation in 1951 of 64,000 acre feet from Colorado River, that in 1951 the grand total of expense for the importation of water made necessary by the inadequacy of supply from Santa Ana River was \$1,396,000. Witness Bailey further testified that Applicant Wilson's property overlies a ground water supply that should be available to him by pumping, that in his (the witness') opinion there is no unappropriated water within the Patton storm drain or within the Santa Ana River Watershed.

The surface flow of Santa Ana River, to which the source filed upon is tributary, via Warm Creek, has been gaged at various points by the U. S. Geological Survey. Monthly mean flows of that stream at the City of Santa Ana, as published in the USGS Water Supply Papers, are arrayed in the accompanying table. The channel distance from the applicant's proposed point of diversion to the junction of Warm Creek and Santa Ana River scales approximately 9.5 miles and it is some 46 miles further downstream to Santa Ana and an additional 9 miles downstream, by river, to the ocean. The tabulated figures indicate that surface flow of Santa Ana River practically never reaches the vicinity of Santa Ana during June, July, August, September or October, that it reaches that vicinity in fewer than half of the months of May and November, and that it is limited and erratic during the months of December, January, February, March and April. Water Supply Paper 1181 states with reference to "Santa Ana River at Santa Ana,"

".... During irrigation season canal of Anaheim Union Water Co. and canal of Santa Ana Valley Irrigation Co. divert entire flow of river at points near Atwood, 19 and 16 miles, respectively, above station. Regulation by Prado flood-control dam 23 miles above station. At times there are small amounts of return irrigation water from drain above station."

Another significant record of stream flow is that pertaining to the station termed by the U. S. Geological Survey "Warm Creek at Colton," that station being about 0.4 mile upstream from the junction of Warm Creek and Santa Ana River and about 9 miles downstream from the applicant's proposed point of diversion. According to Water Supply

Flow of Santa Ana River at Santa Ana in cfs

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1923	19.2	17.5	1.86	5.47	0.54	0	0	0	0	0	2.43	3.80
4	13.3	2.13	2.51	3.62	.58	0	0	0	0	0	0	2.34
5	1.15	0	0.14	4.22	0	0	0	0	0	0	0	0
6	0	4.02	0.10	358.0	1.84	0	0	0	0	0	1.67	5.03
7	3.16	1030.0	100.0	50.0	1.5	0	0	0	0	0	1.97	3.41
8	2.35	15.5	3.72	0.58	0	0	0	0	0	0.05	0.10	3.23
9	1.39	0.27	0	0	0	0	0	0	0	0	0	0
1930	0.76	.01	9.98	0	1.58	0	0	0	0	0	0	0
1	0	0	0	0	0	0	0	0	0	0	0	0
2	1.1	135.0	0.34	0	0	0	0	0	0	0	0	0
3	6.58	1.64	0	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0	0	7.94	5.5	34.2
5	11.3	2.05	7.13	0	0	0	0	0	0	0	0.83	9.42
6	0	33.0	.003	.01	0	0	0	0	0	0	0.43	0
7	4.43	541.0	174.	22.9	0	0	0	0	0	0	0	22.1
8	0.30	14.6	2029.	47.4	4.65	0	0	0	0	0	0	0
9	8.03	17.5	0.77	0	0	0	0	0	0	0	0	29.3
1940	32.5	17.2	.6	2.26	0	0	0	0	1.65	0	0	0
1	1.58	193.0	803.	320.	12.6	.02	0	0	0	0	0	67.0
2	.93	.55	.59	.21	.08	.007	0	0	0	0	0.25	7.27
3	374.	202.	484.	11.3	2.18	0	0	0	0	0	0	0
4	7.23	197.	45.8	1.33	1.71	.03	0	0	0	0	.01	5.82
5	2.46	42.8	43.7	0.39	0.67	.03	.03	0	0	0	9.19	3.97
6	1.51	.54	5.06	2.48	0	0	0	0	0	0	0	0
7	5.94	2.43	.17	.07	.06	.03	0	.003	0	.07	10.9	13.6
8	.08	.09	.49	.32	.08	.03	0	0	0	0.01	0	.08
9	0.02	0	0	0	0	0	0	0	0	0	0	0.05
1950	2.19	4.21	.10	.93	.05	0	.01	.05	.03	0	.06	3.20

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Paper 1181 "Warm Creek at Colton," since August, 1920, has discharged an average of 52.7 cubic feet per second. The Water Supply Paper remarks

"....Meeks & Daley Canal....diverts above station....City of San Bernardino sewage disposal plant discharged 8220 acre feet into Warm Creek above station during year....During greater part of year, low-stage flow of Warm Creek passing this station is diverted into Riverside Water Co.'s canal (capacity 100 second-feet) 0.3 mile downstream...."

The monthly mean flows of Warm Creek at Colton, as reported in the Water Supply Papers, are set forth in an accompanying tabulation. The figures indicate that monthly mean flows within the 30 year period of record have never exceeded the carrying capacity of the Riverside Water Company Canal (100 cubic feet per second) in either June, July, August, September or October, and have only exceeded that value in a small minority of other months. In the absence of evidence to the contrary it may be assumed that the Riverside Water Company is entitled to divert, as the Water Supply Paper reports, "the low stage flow during greater part of year." It follows therefore that unappropriated water does not exist, unless very infrequently, in waters tributary to "Warm Creek near Colton" during, approximately, the 7-month period extending from May to November, both inclusive—the same period as that during which unappropriated water appears to be non-existent at "Santa Ana River at Santa Ana."

As to diversions in the manner proposed, during December, January, February, March and April, data are inconclusive. The record relating to "Santa Ana River at Santa Ana" indicates that flows during those

Monthly Mean Flows of Warm Creek near Colton in cfs

Year	Jan.	Feb.	March	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1920												
1	88.3	84.4	113	79.7	65.7	62.8	54.6	62.5	59.1	57.7	62.8	69.3
2	158	200	184	138	105	77.3	74.0	48.9	48	59.7	62.4	216
3	109	108	96.7	89.7	65.2	62.7	58.9	73.3	71.5	63	100	145
4	87.1	83.9	86.9	90.3	67.9	61.7	54.2	56.5	54.4	50.9	54.3	74
5	71.3	67.2	73.3	72.6	55.3	50.5	47.2	44.1	40.7	49.1	52.4	63.4
6	57.4	70.9	54.1	179	70.3	49.4	41.3	37.9	39.2	41.1	49.0	66.4
7	62.3	172	80.9	76.0	49.7	46.4	36.2	34.8	35.5	42.3	57.1	58.4
8	70.3	70.9	60.0	51.7	40.2	35.0	29.2	28.2	26.1	31.2	36.6	52.4
9	52.8	62.2	61.0	61.5	39.1	29.6	24.5	21.1	23.0	23.6	25.7	28.5
1930												
1	43.7	47.2	55.8	44.1	41.3	25.6	18.6	16.8	17.4	20.7	23.5	22.5
2	37.6	53.7	37.7	31.3	28.4	21.9	12.2	11.0	17.9	19.0	29.0	44.3
3	44.1	98.6	42.8	27.4	21.5	20.0	14.4	11.5	12.3	16.6	16.1	27.6
4	52.8	41.9	29.3	23.5	20.7	15.0	10.1	8.98	8.82	10.7	13.1	30.4
5	50.8	25.3	27.4	12.6	7.76	8.0	5.92	4.57	3.88	14.1	16.4	33.7
6	44.6	47.0	43.1	32.4	11.4	7.15	5.45	5.35	4.28	4.15	5.68	7.73
7	10.2	65.9	29.0	18.6	6.63	5.23	4.38	4.05	4.05	13.0	11.7	41.7
8	38.9	111	89.0	52.0	13.9	7.62	5.64	5.79	5.13	5.73	6.20	25.6
9	41.4	72.9	720	100	69.5	33.6	23.7	25.4	21.3	25.3	26.2	60.2
1940												
1	77.7	80.1	68.7	44.2	35.4	29.2	26.2	24.3	39.8	30.5	30.4	33.0
2	67.3	72.4	55.9	55.7	37.4	29.6	23.8	22.0	19.8	25.6	30.1	64
3	66.3	135	173	140	65.2	48.9	46.6	44.5	39.9	50.2	55.9	76.
4	79.8	66.2	75.3	66.0	49.6	50.6	39.3	36.2	38.3	33.0	30.0	42.2
5	160	122	181	120	71.3	58.0	44.3	29.1	26.4	34.0	40.5	88.9
6	82.4	157	143	99.8	71.1	62.6	57.8	47.9	47.3	38.7	84.9	67.6
7	62.9	101	118	93.0	59.1	62.2	55.6	56.3	53.4	49.5	48.4	110
8	71.6	75.5	83.9	76.9	65.7	49.6	43.5	40.1	38.6	47.2	108	105
9	86.1	69.6	56.9	56.4	56.3	45.7	35.3	33.0	31.9	28.8	39.6	63.8
1950												
1	48.4	70.1	65.8	66.4	44.1	40.8	30.4	24.2	24.9	31.5	31.1	40.6
2	63.9	72.4	64.1	44.2	39.5	25.8	21.2	15.8	14.4	19.8	35.6	41.0
3	51.0	64.7	44.4	34.9	24.9	21.1	17.5	17.5	17.8			

months usually reach that gage but that they are extremely erratic; there are months both of zero flow and of flows of flood proportions. The flow of Warm Creek near Colton seldom exceeds the capacity of the Riverside Water Company Canaleven in winter but there is no evidence or testimony that either Riverside Water Company or Weeks and Daley Water Company diverts at that season. Since flows near Santa Ana are usually much less, in winter as well as in summer, than the corresponding flows near Colton it is entirely possible that some or even all of the flow of Warm Creek, when not actually diverted, finds its way into ground storage and that its diversion under Application 14376 would diminish the supply available to pumpers along the intervening reach. Finally it is not apparent that the applicant would use water beneficially during the December-April period even though his application initiates a year-round appropriation. In that connection the applicant testified (page 24 of transcript):

"Well, there is lots of water in the winter. Lots of water coming through there in the winter. Of course, that runoff from those hills back in there, if that is what you are getting at. I know that. I am not denying that. That is when we don't use the water, you see."

The applicant also testified at the hearing (on May 21, 1952: Page 10 of transcript):

"I irrigated Friday and Saturday and Sunday. That is the first time I have irrigated since way last year"

Summary and Conclusion

Unappropriated water is usually non-existent from May to November, both inclusive, at the point at which the applicant seeks to appropriate. Its existence, at times, during December, January, February,

March and April is possible but is not established by the data and the applicant intimates in his testimony that irrigation during those months is unnecessary. In view of these circumstances it is the opinion of this office that the approval of Application 14376 is unwarranted and that the application should be denied.

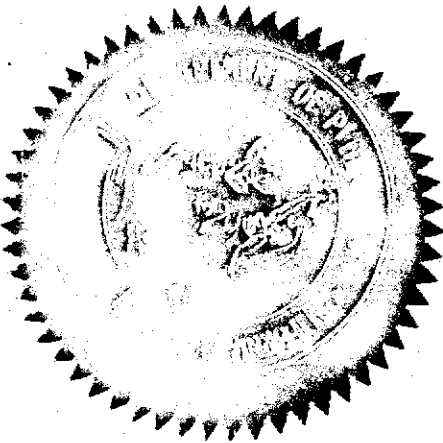
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ORDER

Application 14376 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 14376 be rejected and canceled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 29th Day of December, 1952.



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