

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 14560 by Elizabeth W. Alison to Appropriate Water from Coyote Creek Tributary to Ventura River in Ventura County for Domestic, Stockwatering and Irrigation Purposes.

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Decision A. 14560 D. 781

Decided December 16, 1953

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Appearances at Hearing Held at Ventura on February 11 and 13, 1953:

For the Applicant

Elizabeth W. Alison

Walter H. Young, Attorney at Law

For the Protestants

Ventura County Flood Control
District

Roy A. Gustafson
District Attorney, Ventura County
by James E. Dickson
Deputy District Attorney

City of San Buenaventura

Donald D. Roff, City Attorney

Edith H. Hoffman)
W. H. Hoffman, Jr.)

James C. Hollingsworth
Attorney at Law

A. R. Benning

H. Arthur Waite, Attorney at Law

Frank G. Dunshee)
John Dunshee)
Dorothy Battin)

Frank G. Dunshee

EXAMINER - HARRISON SMITHERUM, Supervising Hydraulic Engineer, Division of Water Resources, Department of Public Works, for A. D. Edmonston, State Engineer.

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

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OPINION

General Description of the Proposed Development

The application initiates an appropriation of 418 acre-feet per annum from Coyote Creek, tributary to Ventura River, collected between November 1 and June 30, at a point within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of projected Section 23, T4N R24W, ^{SB}~~SBB&M~~. Storage is to be effected by means of an earth-fill dam 55.5 feet high by 366 feet long, located at the proposed point of diversion. The resultant reservoir (El Rancho Cola Reservoir) is to be 17.5 acres in surface area and 348 acre-feet in capacity. The water is wanted for domestic service to 6 dwellings occupied by a total of 30 persons, for the watering of 1300 head of cattle, for the operation of a 300-cow dairy and for the irrigation of a total of 321.28 acres, mainly pasture, located within projected Sections 23, 24, 25 and 26 of T4N R24W, SBB&M. Irrigation is to extend from about March 1 to about November 1. The applicant also claims riparian and old appropriative rights.

Protests

Ventura County Flood Control District protests the application, stating:

"We have filed ... Application 11310 ... 6,000 acre feet for domestic and irrigation purposes (and) Application 11429 ... 4,000 acre feet for municipal purposes. These applications are currently pending before the Division and we are diligently working to perfect them by making necessary studies relative to the construction of a dam and reservoir and a distribution system. However, our right is still unperfected and we wish to take no chance of losing or waiving our priority by failing to protest. Full development of our plan may

take all of the water in the stream and leave none remaining for the applicant, Alison, while if Alison's application is granted there will not be sufficient water in the stream to take care of our pending appropriations."

* * *

"This protest may be disregarded and dismissed if application is made junior to and subject to our prior right under Applications 11310 and 11429."

City of San Buenaventura protests that the proposed appropriation will interfere with its appropriation at Casitas Narrows at which place it "has appropriated all the surface flow for public use including domestic, industrial and irrigation use." It states with respect to its claimed right to the use of water from Coyote Creek that said right is based upon "prior appropriation and use which began prior to 1914." In that connection it states further:

"Notice appropriating 2,000 miner's inches filed July 7, 1872, and one appropriating 500 miner's inches filed November 23, 1873."

* * *

"Town of Ventura had a supply as early as 1854. The City herein purchased the system serving it in 1922. The use is continuous throughout the year. Stream flow being insufficient, the city drilled wells above submerged dam at Casitas to produce underground waters. Use of water from these sources from 3721 acre feet, year 1923-24 to 6,017 acre feet 1946-47. Place of use is within City and territory outside, principally that between Casitas and the City limits in Ventura River Valley."

It describes its point of diversion as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 1, T3N, R24W, SBB&M, and mentions no terms under which its protest may be disregarded and dismissed.

Edith H. Hoffman individually and W. H. Hoffman Jr., as executor of the estate of Effie Hobson Knox, deceased, protest that the proposed application will impair their riparian rights and state:

"That Protestants, for more than 20 years last past have irrigated approximately 93 acres of land from the surface and subsurface flow of Coyote Creek; that said irrigation depends upon seasonal rainfall and extends between on or about the 1st of April to on or about the 1st of December annually; the irrigation of permanent pasture; domestic and household purposes daily and the watering of approximately 600 head of livestock daily."

They describe their point of diversion as being located "below the juncture of Santa Ana Creek and Coyote Creek, located on Lot 27 of the Robinson, Fawcett and Dean Subdivision, in the Rancho Santa Ana. They mention no terms under which their protest may be disregarded and dismissed.

A. R. Benning protests that the proposed appropriation

"will impair the riparian rights of protestant to water from Coyote Creek which protestant has enjoyed for more than seven years for the purpose of domestic, irrigation and the watering of livestock; that prior to that time said water was used by the predecessor in interest for more than forty years."

Protestant Benning bases his claim of a right to divert from Coyote Creek upon "use of underground water from well dug on said property and diversion from the river." He states that his use of water is for irrigation of orchards and watering of livestock as well as for domestic purposes. He describes his place of use as being "that portion of Tract 24 of Robinson, Fawcett and Dean Subdivision, Rancho Santa Ana lying southerly of State Highway Route 151." He mentions no terms under which his protest may be disregarded and dismissed.

Frank G. Dunshee filed no protest prior to the hearing but entered an appearance at the hearing, on behalf of himself, John Dunshee and Dorothy Battin and testified in opposition to the approval of the application. His testimony is summarized in a later paragraph.

Answers

The applicant's answer to the protest by Ventura County Flood Control District contains among others the following passages:

"The ... underground dam at Casitas Narrows ... has large holes in it where water can be ... seen flowing through and under Said dam is not efficient, not water tight, and permits much water to pass through and under it. Water after passing this dam proceeds down to the ocean.

"The City of Ventura is insisting that the water flow in Coyote Creek and Ventura River be maintained to support this wasteful and inefficient system. On the other hand, the Ventura County Flood Control District seeks to store unappropriated waters in a dam which it proposes to build on Coyote Creek in order to supplement and add to the water supply of the City of Ventura. It would be wasteful and excessive use of the unappropriated water of Coyote Creek to require such waters to be stored for the City of Ventura while the City of Ventura continues to maintain its inefficient and wasteful system of appropriating from the Ventura River at the so-called subterranean dam at Casitas."

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"The Ventura County Flood Control District has no facilities to store unappropriated water at the present time and the application has been on file for 5 years. The said District has not diligently prosecuted said application and it is speculative and uncertain whether the voters of Ventura County will ever approve the construction of such a dam. In the meantime, the flood waters and the unappropriated waters are wasted and can be put to beneficial use by the applicant."

* * *

"In view of the certainty that there are unappropriated waters in Coyote Creek, that can now be stored by applicant before the Ventura County Flood Control District completes its dam that would otherwise be wasted, and in view of the uncertainty as to whether the Ventura County Flood Control District will ever construct a dam in the dimensions and storage capacity to consume all such unappropriated waters, this applicant should be permitted to store unappropriated or flood waters at the present time."

The applicant's answer to the protest by the City of San Buenaventura contains among others the following passages:

" ... the City ... does not now have any valid appropriation right or riparian rights to the waters of Coyote Creek ... the City's intake system is located on the Ventura River stream bed

"That the City of Ventura has a so-called underground dam across the Ventura River streambed to assist in the diversion of water to its intake ... the said underground dam is not water tight and permits underground waters to flow over, through and under it; that the Ventura River streambed at this point is separated from the Coyote Creek streambed at said underground dam which is a large body of land approximately 500 feet wide that lies above the streambed from 6 to 15 feet. That the subterranean streambeds are likewise separated so that the Ventura River and Coyote Creek flow in separate channels underground.

"That at a point almost in line with the so-called underground dam across the Ventura River is a concrete obstruction across Coyote Creek of similar appearance to the so-called underground dam across the Ventura River. This so-called dam across Coyote Creek does not obstruct the surface or underground waters of Coyote Creek. There are large holes in said underground dam across Coyote Creek directly in the streambed through which the stream flows without interruption at the present time. This condition is clearly visible to the naked eye and the location of the streambed and the ineffectiveness of the said stream dam across Coyote Creek make it visibly

apparent that the City of Ventura cannot divert and has not been diverting water from Coyote Creek; that a physical inspection has been made of the streambed of Coyote Creek above the so-called underground dam and there is no visible evidence of any wells, intake system or points of diversion to the City of Ventura water system, the only well located being a small well of the County of Ventura used to supply water for Foster Park.

"The City of Ventura rests its claim to a right to use water upon an appropriation prior to 1914. Applicant ... alleges that the City's use of water at that time was limited to the Ventura River and was much less than the notice of appropriation referred to in the protest.

"The protest of the City of Ventura sets forth and alleges no right to appropriate water from Coyote Creek subsequent to 1914 and it does not appear ... on what basis the City of Ventura claims its right to the use of water since 1914.

" ... the granting of this application will cause no injury to the City of Ventura The surface and underground flow of Coyote Creek is not diverted into the Ventura River before the point of junction above referred to. The City of Ventura has no facilities to store flood waters or unappropriated waters and will in no way be damaged or injured by the granting of the application"

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"There is unappropriated water at Coyote Creek. A visible inspection of the streambed of Coyote Creek made between January 1, 1952 and May 17, 1952, on several occasions, shows water flowing through the entire streambed of Coyote Creek and joining with the Ventura River below the City's underground dam and eventually flowing into the ocean.

"That on May 17, 1952 a stream of water was flowing into the ocean from the Ventura River approximately 30 feet wide and 3 feet deep and said stream had been flowing in such proportions from approximately January 1, 1952 through May 17, 1952

The applicant's answers to the protests by Edith H. Hoffman et al. and by A. R. Benning are substantially identical and both contain passages, among others, as follows:

"That the said protest refers to riparian rights of the protestant and that this is not a valid or legal protest The protestant makes no use of flood or unappropriated waters and applicant ... alleges that the protestant makes no direct diversion from Coyote Creek to obtain water for his land through wells. Protestant has no dams, facilities, basins or other means of retaining flood waters or unappropriated waters of Coyote Creek."

* * *

"The granting of the application ... will be beneficial to the watershed of Coyote Creek in connection with the applicant's project. Applicant has cleared acreage of brush and shrubbery which formerly consumed waters in the watershed of Coyote Creek on the applicant's land; that the applicant's land and the underground strata are such that the use of the waters on applicant's land from the applicant's dam will cause a considerable portion of said waters to return to the streambed of Coyote Creek and that the construction of applicant's dam and the storage of water therein will actually improve water conditions and the stream flow in Coyote Creek as it leaves applicant's land."

Hearing Held in Accordance with the Water Code

Application 14560 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 hearing under the provisions of the California Administrative Code, Title 23, Waters, on Wednesday, February 11, 1953 in the Supervisors Hearing Room, Court House, Ventura, California. Of the hearing the applicant and the protestants were duly notified. The hearing was continued to and completed on February 13, 1953.

Gist of Testimony

Witnesses at the hearing testified in substance as follows:

Elizabeth W. Alison testified (pages 12 to 15 of transcript) to the effect that she is the applicant in the matter at issue, that she is the person named in the certificate of approval issued by the Division of Water Resources on May 5, 1952, and that the allegations in Application 14560 are true.

William N. Booth testified (pages 15 to 41 of transcript) to the effect that he is a geologist, that he made a geologic survey of the Coyote Creek area, commencing in 1950, in connection with the drilling of an oil well, that there is a dam on the applicant's property, also a pump and sprinkling system, that the drainage from irrigated lands served by the dam returns to Coyote Creek, that irrigation as now practiced on the applicant's lands results in surface as well as underground runoff, that within a few hours after an irrigation commences the flow of Coyote Creek downstream from the dam increases, that probably 60% of the water applied to the land surface in irrigation penetrates the soil and 40% of that or 24% of the amount applied or more returns to the creek, that the flow at Ventura River Bridge on Highway 101 during periods of rainfall is sometimes a flood menace to the bridge, that the applicant's land along Coyote Creek was once covered with a thick growth of brush and trees, that the removal of that vegetation has increased the summer flow of the creek, that there are observable

faults crossing the streambed below the Alison dam, that these faults have given rise to small springs which increase the flow of the creek, that Coyote Creek is an intermittent stream, that at all times during 1950 there was a small flow in Coyote Creek below the dam, that tributaries enter Coyote Creek below the dam, that brush removal on the applicant's property began in 1950, that there was water entering the A. R. Benning property in the summer of 1951.

David W. Brock testified (pages 41 to 58 of transcript) to the effect that he is a photographer, that in company with Attorney Young he visited El Rancho Cola dam on May 16, 1952, also the A. R. Benning property, the Edith W. Hoffman property and other places, that on that trip he observed water spilling over the applicant's dam, a flow at Coyote Creek at its junction with Ventura River, also a flow into the ocean, that he took the pictures introduced as Applicant's Exhibit No. 5, that on July 10, 1951 he also took the pictures introduced in evidence as Applicant's Exhibit No. 6, that on January 9, 1952 he took the pictures introduced in evidence as Applicant's Exhibit No. 7, that he is neither an engineer nor a hydrologist.

Richard H. Jamison testified (pages 59 to 111 of transcript) to the effect that he is County Hydrologist, that his office keeps a record of the flow of Coyote Creek and of the flow of Ventura River, that the record his office keeps is the same as the record published

in USGS Water Supply Papers, that in his office also is a report by Harold Conkling that was filed with the Ventura County Flood Control District, that Applicant's Exhibits 8, 9 and 10 are taken from the Conkling report, that the Conkling report covers studies in connection with a proposed county dam on the Hoffman property at Casitas, that the probable annual flow passing the Casitas Dam Site ranges from a low of 50 acre-feet to a high of about 50,000 acre-feet and averages about 10,000 acre-feet, that flood waters passing the gaging station on Coyote Creek for the most part empty into the ocean, that except when there are rains in the mountains, Coyote Creek is a small stream, that when rains occur Coyote Creek rises suddenly and recedes rapidly, that when the creek is at flood stages irrigation is unnecessary, that water is needed for irrigation from about April 1 to about November 1, that the City of Ventura diverts some water from Coyote Creek, that such diversion is below the gaging station, that his office has made a few measurements of the water so taken and that the largest such measurement is not in excess of 2.5 second feet, that when there is a large flow in Coyote Creek there is also a large flow in Ventura River, that it is therefore only at low stages that the City diverts from Coyote Creek, that there are no other diversions on Coyote Creek below the Coyote Creek gaging station, that it is his understanding, based on reports by men who made flow measurements, that the City diverts from Coyote Creek by means of a pipe on the west side of the dam, the pipe running along the dam's upstream face.

W. R. Eaton testified (pages 111 to 121 of transcript) to the effect that he is familiar with the so-called underground dam at Foster Park, having been foreman and superintendent of the water system from 1914 to 1923 and having developed the dam, that at one point the dam in crossing Coyote Creek does not go to bedrock, an opening having been purposely left to bypass the river water during construction, that the opening existed always, until 1946 to his knowledge, that Coyote Creek commonly flowed over the dam, that once, probably in 1920, he attempted to divert the surface flow through an existing pipeline that had not been in service since 1908, that the effort was hardly worth while, the pipe at that time being full of gravel, that the pipe was not used again at least until 1923 when the City purchased the system and he left the job, that from 1923 to 1946 he visited the Coyote Creek dam once or twice almost every year, to fish, that water flows under the dam whenever there is surface flow, that during the rainy seasons water usually flows past the dam on Coyote Creek and into Ventura River, that Coyote Creek is separated from Ventura River at the underground dam by a body of land, that Coyote Creek often goes dry, that it was never considered by the old company to be a reliable source of supply, that the demand was then less than it is now, that a 6 foot rise in bedrock prevents the flow in Coyote River from mingling with the flow in Ventura River, that sometimes at high water there is commingling of waters of the two streams.

Milton E. Ramelli testified (pages 121 to 143 of transcript) to the effect that he is a licensed civil engineer, that he designed and supervised construction of applicant's dam, that the dam is an earth-fill dam, that the lake back of the dam is 17 acres in extent and its volume is 340 acre feet, that there is an irrigation system supplied from the dam and serving 320 acres of the applicant's lands, that the dam was started around October, 1950, and finished except for some additional work on the spillway in early 1951, that he has seen water flowing in Coyote Creek at Foster Park and at approximately the same time Ventura River discharging into the ocean, that that occurs several times a year, that Coyote Creek is subject to flash floods, that there are no dams between El Rancho Cola dam and the underground dam at Foster Park, nor between the underground dam and the ocean, that El Rancho Cola dam extends to bedrock, that Coyote Creek below the dam dried up in 1950, that it was dry when construction of the dam started and was dry during construction, that some 60 gallons per minute of subsurface flow were gotten rid of by pumping during construction, that there was no water running in Coyote Creek in July 1951 when his investigation started, that Coyote Creek was dry, except for pools, to its mouth, that that condition usually obtains when rainfall is insufficient, that the dam spilled in January 1952, that water can be passed through the dam by means of two pipelines, one of which can drain the dam at a rate of 80 cubic feet per second, and the other of which leads to the Alison pumping plant, capacity 800 gallons per minute, that the

height of the dam averages 51 feet above the streambed, that leakage past the dam amounts to 2, 3 or 4 inches, that there is a spillway 15 feet lower than the top of the dam, that there are 15 square miles of watershed above El Rancho Cola dam, that the spillway will pass 15,000 cubic feet per second which is somewhat more than the estimated maximum runoff.

J. Q. Jewett testified (pages 147 to 162 of transcript) to the effect that he is a registered civil engineer, that he has examined Coyote Creek and the stream flow records pertaining thereto, that in his opinion there is unappropriated water in Coyote Creek inasmuch as water passes the gaging station and wastes into the ocean, that over the period of record such wastage on average has greatly exceeded 340 acre-feet per annum, that Coyote Creek is a torrential stream, that peak flows usually are approximately 5 times mean daily flow, that the Coyote Creek streambed is physically separated from the Ventura River streambed at Foster Park, that the barrier separating the two streams at that point is some 15 feet high and supports a growth of rather large trees, that he last viewed the site under discussion on February 6, 1953, that there was no evidence of any surface diversion from Coyote Creek to Ventura River, that the barrier separates the two streams by at least 100 feet and extends several hundred feet downstream to a point where the streams actually join, that 10,000 acre feet per annum appropriated by storage would substantially use up the water of Coyote Creek, that his opinion

that there is unappropriated water does not take into consideration any appropriation that may yet be perfected and is prior in right to Alison's.

David Alison testified (pages 164 to 182 of transcript) to the effect that El Rancho Cola is 2,070-odd acres in extent, that after Elizabeth Alison acquired that land approximately 500 acres were cleared, that no ground was under cultivation until the spring of 1951, that the irrigation system reaches about 320 or 325 acres, that from 700 to 750 cattle are now on the ranch, that each cow or steer requires 8 gallons, 3 waterings a day, that there are about 7 households on the place, that some 320 to 325 acres are in irrigated permanent pasture, that he visited the mouth of Ventura River one or more times each month during 1952, that the river at all times was flowing into the ocean, that it tasted like ordinary drinking water, that until the underground dam at Foster Park was recently repaired water ran under the dam, that water is now going over the dam, that the outlet of El Rancho Cola dam has never been completely sealed, that the reservoir behind that dam filled between Christmas 1951 and New Years 1952 by a storm of 3 or 4 days duration, that at that time water was flowing in Coyote Creek at Foster Park and was running into the ocean from Ventura River, that during the storm water in the spillway was from 5 to 6 feet deep, that when irrigation is in progress 50% or more of the water applied returns to Coyote River, that all lands irrigated on El Rancho Cola drain into Coyote River,

that return flow occurs at all times during the drought season when irrigation is in progress, that as a result of the clearing of vegetation some 6 or 8 springs came into being and the flow of Coyote Creek has noticeably increased, that he understands that the application restricts diversion to 418 acre feet diverted between November 1 and June 30, that diversions during that period are subject to vested rights, that water cannot be diverted under the application before November 1 or after June 30 and that the Ventura County Flood Control District applications for 10,000 acre feet per annum are prior to the Alison application, that he is willing to go on with his project until such time as the Ventura County Flood Control District Project goes into operation.

W. H. Hoffman Jr. testified (pages 182 to 196 of transcript) to the effect that he is the husband of Edith H. Hoffman, and the owner of the 8,000 acre Rancho Casitas, that he has been using water from Coyote Creek since 1916, for stockwatering and irrigation, that water was flowing in Coyote Creek on his property until the beginning of construction of El Rancho Cola dam, that the flow extended for from $3\frac{1}{2}$ to 4 miles, that when the foundation for the dam was laid the water dried up and one particular spring that had flowed for over 100 years dried up and the water in his wells dropped 14 or 15 feet, that in 1951 rainfall was only about 10 inches and water ran in Coyote Creek until about the end of March after which it was dry until the big 1952 flood, that at the lower end of the property another stream comes in from the west, that stream rising on Red

Mountain, that his residence is about 2 miles above the bridge over Coyote Creek at Foster Park, that he pumps from 2 wells on the site of the proposed Casitas dam, that from November 30 to the following June 30 he uses water only for domestic purposes and stockwatering, that the storage proposed under the Alison application would prevent the flow of Coyote Creek going underground to replenish the wells he pumps from in summer, that the flow of Santa Ana Creek is as much as the flow of Coyote Creek, that another tributary to Coyote Creek is Willow Creek, that Willow Creek flows through his ranch, that when the Alison property was cleared and water ran off the Alison hills no surface flows reached his property, that the Dunshee ranch is between him and Alison, that in 1952 there were 40 inches of rain and the irrigation by Alison had no effect whatsoever on the flow through his (Hoffman's) property.

A. R. Benning testified (pages 200 to 215 of transcript) to the effect that his ranch is at the intersection of Casitas Pass and Highway 150 and comprises 19.7 acres, that he raises apples and peaches, that he irrigates every year, that his water comes from two wells on the channel of Coyote Creek, that he acquired his property in 1944, that previous to 1947, in winter, surface flow occurred in the channel of Coyote Creek, that in 1948 there was little surface flow at any time, that in 1949 the flow was still less, that in 1950 it reached his wells, that in 1951 there was no surface flow, that when surface flow is reaching his place the water level in his well is $6\frac{1}{2}$ feet below the ground surface, that

in 1951 there was only a depth of 4 feet of water in his 23 foot well, that he has no means of diversion other than his wells, that in August and September of 1951 he had no water supply whatever and dug a new well 34 feet deep, that about 5 feet of water stood in that well but that pumping at a rate of 20 gallons per minute would dry it up, that his property is across the highway and downstream from the Dunshee place, that he pumps for irrigation from April 1 to November 30.

Robert L. Ryan testified (pages 215 to 225 of transcript) to the effect that he is County Surveyor and Engineer-Manager of the Ventura County Flood Control District, that the District in 1946 filed two applications to appropriate water in amounts of 6,000 acre-feet for domestic and irrigation purposes and 4,000 acre-feet for municipal purposes respectively, that applications were filed at about the same time to appropriate from Matilija Creek, that a dam was built on Matilija Creek, that the District contemplates building a dam at Casitas Narrows on Coyote Creek, that ever since 1946 engineering surveys and studies have been going forward with a view to an integrated storage system including the dam at Casitas Narrows, that the applications are all alive and are being pushed forward in good faith.

Hugh M. Wood testified (pages 226 to 258 of transcript) to the effect that he is Water Superintendent of the City of Ventura, that he is familiar with the submerged dam at Foster Park, that the location of the submerged dam is as indicated by the letter "W" on Applicant's

Exhibit 12, that the submerged dam is about 1,000 feet upstream from the gaging station on Ventura River, that the City diverts water from Coyote Creek frequently although not every year, that the amount diverted is sometimes as much as 2 second-feet, that during such diversions not to exceed a half second-foot remains in Coyote Creek, that the City conducted a study of the submerged dam during 1952 and a report was made by Consulting Engineer Montgomery, that the report is entitled "Report of Casitas Dam Investigation," that the report deals with the passage of water around the easterly end of the dam, that the City furnishes water in general for all requirements from Foster Park to the ocean, that the City is diverting in all about 6,000 acre-feet per annum from Ventura River and Coyote Creek, that there is usually some winter flow in Ventura River below Foster Park but that there has been no summer flow in recent years, that surface flow ceases in Ventura River before it ceases in Coyote Creek, that the City usually diverts from Coyote Creek except during floods, that the pipeline at the underground dam was put in about 1910 and is upstream from the dam with about 2 feet of covering, that the City does not use such flow of Coyote River as passes the submerged dam, that the City diverts no water below its intake works at Foster Park, that there has been a water shortage at the intake works during the winter months of drought years, that he has observed water at the submerged dam sometimes when there was no water in Coyote Creek at

the Hoffman Ranch, that Table 15 of the Conkling report contains records obtained by Mr. Conkling from the City of Ventura.

Charles W. Petit testified (pages 258 to 266 of transcript) to the effect that he is a retired civil engineer, that he is a member of the Ventura City Council, that he is familiar with the submerged dam at Foster Park, that the City's facilities for diverting from Coyote Creek consist of an open ditch delivering into a pipeline which leads to the City's pumping plant, that the City takes water from Coyote Creek insofar as it is available whenever necessary to satisfy the demand on the City's system, that he has observed such diversions in amounts of 1 or 2 second-feet, such amounts representing all the water available in Coyote Creek, that in 1921 the submerged dam had not been completed and that it has not been completed yet.

Frank G. Dunshee testified (pages 267 to 279 of transcript) to the effect that he has lived in Santa Ana Valley 30 years, that with his brother John he owns about 1100 acres, that the land is situated just south of the Alison property, that it is devoted to cattle raising, that it is traversed for about a mile by Coyote Creek, that it lies just north of the Benning property, that in recent years after the end of winter, Coyote Creek flowed on the surface at the north end and at the south end of its course through his property and sometimes in between, although usually there was a gap where the flow was underground, that that was the condition in 1950 but that there was no surface flow in 1951, that no water came down Coyote Creek from the

headwaters, that the creek dried up completely in November of 1951 except for one small pool, that in 1952 there was plenty of water, that he does not divert from Coyote Creek but that he uses it for watering cattle of which there were about 100 in 1951, that since Alison has been irrigating he has noticed no difference in the flow at the north end of his property, that in 1951 he took his cattle out in early November because of lack of water.

David Alison, recalled, testified (pages 280 to 287 of transcript) to the effect that Mr. Dunshee did not take all his cattle away in November of 1951, that he (the witness) saw cattle watering from a certain water hole on Mr. Dunshee's property in October, November and December of 1951.

William C. Spear testified (page 268 of transcript) to the effect that Frank Dunshee told him during a recent conversation at El Rancho Cola that there had been more water passing through his place when irrigation was in progress on the Alison property than ever before.

Elizabeth W. Alison, recalled, testified (page 289 of transcript) that during a conversation "last fall" Frank Dunshee said that he thought our building the dam was a grand thing and that they had had more water since the building of that dam than ever before.

Hearing Exhibits

The following exhibits were introduced in evidence:

Applicant's Exhibits

1. Deed, Charnley to Alison - photostat.
2. Easement, Fowler to Alison - photostat.
3. Certificate of Approval, by State Engineer, of plans and specifications for construction of El Rancho Cola Dam - photostat.
4. Ventura Quadrangle, USGS.
5. "Group B" of 25 photographs and appended typewritten descriptions; newspaper of 5/16/52.
6. "Group C" of 11 photographs and appended typewritten descriptions.
7. "Group D" of 9 photographs and appended typewritten descriptions.
8. "Table 8 - Measured and Estimated Monthly Runoff in Coyote Creek near Ventura" - photostat.
9. "Table 9 - Measured and Estimated Monthly Runoff - Ventura River near Ventura" - photostat.
10. "Table 13 - Estimated Monthly Natural Runoff at Casitas Dam Site on Coyote Creek."
11. Tabulated figures relating to Casitas Submerged Dam.
12. Aerial photograph.
13. Photostats of selected pages of USGS Water Supply Papers.
14. "Interim Report on Ventura County Investigation" - State Water Resources Board.
15. "Group A" of 3 photographs and appended typewritten descriptions.
16. Two photographs.
17. Three photographs.
18. Three photographs.
19. One photograph.

Protestant's Exhibit

A. Profile of Submerged Dam at Casitas.

Examiner's Exhibit

1. "Table 15 - Diversion by City of Ventura from Ventura River at Casitas."

Information from Other Sources

The flow of Coyote Creek at a point 0.2 mile upstream from its junction with Ventura River has been measured by the United States Geological Survey, every water-year except one, since October, 1927. According to USGS Water Supply Paper 1181, the flow at that station ("Coyote Creek near Ventura"), over the 22 water-years of published record, has ranged between zero and 11,500 second-feet and has averaged 13.1 second-feet. The drainage area above the point of measurement is given as 41.1 square miles, hence the average runoff per square mile of watershed above the USGS gage is $13.1/41.1$ or 0.319 cubic foot per second, equivalent to about 230 acre-feet per annum.

Distribution of seasonal runoff by months from Ventura River watershed, has been estimated, according to Bulletin No. 5 - "Flow in California Streams", to be as follows:

January	15.6%
February	17.1
March	27.6
April	13.6
May	8.4
June	4.7
July	2.8
August	1.8
September	1.4
October	1.8
November	2.0
December	3.2

According to these figures a total of 92.2% of a normal year's runoff occurs between November 1 and June 30 - Applicant Alison's proposed collecting period.

Other applications to appropriate from Coyote Creek, aside from a few minor filings on tributaries, are Applications 11310 and 11429 by Ventura County Flood Control District to appropriate at the site of the proposed Casitas dam, that site lying within Section 1, T3N R24W, SBB&M. Under these two applications it is sought to appropriate, respectively, 6000 acre feet per annum for irrigation and domestic purposes within a certain net area of 3100 acres in Zone I of the applicant District and 4000 acre feet per annum for municipal purposes within the city of Ventura. The Casitas

reservoir as described in the applications is to have a surface area of 445 acres and a capacity of 22,000 acre-feet. Applications 11310 and 11429 are incomplete and are currently under an extension of time within which to complete, to December 31, 1953.

Discussion

Of the 41.1 square miles of watershed that lie above the USGS gage on Coyote Creek, 36.8 square miles or 89.6% appear from the map (Ventura Quadrangle, USGS) to lie above the site of the proposed Casitas dam and 15.7 square miles or 38.2% appear to lie above the point where Applicant Alison seeks to appropriate.

An examination of the Ventura Quadrangle, USGS, indicates that the watershed above the applicant's dam probably yields at least as much runoff per square mile as the watershed above the USGS gage. It may be assumed therefore that the runoff above the applicant's dam will amount in an average year to at least 15.7×230 or 3611 acre feet and that 92.2% of that amount or about 3330 acre-feet will occur during the applicant's proposed collecting period. The watershed above Casitas damsite, by like reasoning, may be assumed in an average year to amount to at least 36.8×230 or 8464 acre-feet, as compared with the 10,000 acre-feet per annum that Ventura County Flood Control District seeks.

From the preceding paragraph it is apparent that should the project under the Ventura Flood Control District come into full operation, that project will require the entire runoff from the

watershed above Casitas dam, in a normal water-year, and that none will be available for diversion under the Alison application. It is also apparent that until the District's project to store at the Casitas site is operative water may be impounded at the applicant's reservoir without injury to the District; and that after the Casitas development is in operation water may be impounded by Applicant Alison in some years of above-normal runoff.

The protest by the City of San Buenaventura insofar as based upon its rights on Ventura River is invalid, that stream, according to the evidence, being separate and distinct from Coyote Creek. Its allegation of interference with its diversion from Coyote Creek is insufficiently supported. According to the testimony the City diverts from Coyote Creek, in amounts up to about 2 cubic feet per second, when necessary to augment its Ventura River supply. During July, August, September and October there can be no conflict because the applicant does not seek to appropriate during those months. During January, February, March and April^{of a normal season}/the average flow at the City's intake on Coyote Creek probably exceeds the City's rate of diversion by an amount greater than the probable rate of runoff from the watershed above Applicant Alison's dam. During May and June and during November and December the flow at the City's intake is often less than the City's probable requirements; the City at such times would be protected by the provision contained in all permits making diversions thereunder subject to vested rights.

The protest by Edith H. Hoffman et al. and the protest by A. R. Benning, based on apprehension that the Alison application will impair the protestants' riparian rights are not supported by the evidence. Inasmuch as applications to appropriate water are invariably made subject to vested rights and permits in approval thereof are also made subject to vested rights, impairment of the protestants' rights cannot result from the approval of Application 14560. The protestants' attributing of water shortage in 1950 and 1951 to the construction and operation of the applicant's dam is unsupported by the evidence. The under-supply of which the protestants complain more probably resulted from the gross deficiency, in those years, of runoffs which, from Coyote Creek watershed above the USGS gage during the water years 1949-50 and 1950-51, were but about 15.5% and 1.0% of normal, respectively. Little water would have flowed at the protestants' property in those years whether the applicant's system had been in operation or not. Witness W. H. Hoffman Jr. testified that rainfall in 1951 was only about 10 inches and that in 1952 when there were 40 inches of rain the irrigation by Applicant Alison had no effect upon the flow through the Hoffman property whatever.

The objection to the applicant's proposed appropriation, implied in the testimony by Frank Dunshee and based upon shortage of supply in 1951, is an insufficient bar to the approval of the application at issue, for the reason stated in the preceding paragraph.

Summary and Conclusion

The applicant seeks to appropriate 418 acre-feet per annum from Coyote Creek, a tributary of Ventura River, for domestic purposes, stockwatering and irrigation. The water is to be collected in an on-stream reservoir, between November 1 and June 30. The reservoir is already in operation. There appear to be no other reservoirs on Coyote Creek or on Ventura River below the junction of Coyote Creek with Ventura River. The annual discharge of Coyote Creek at a USGS station 0.2 mile above that stream's mouth has averaged about 9470 acre feet, over 22 years of published record.

The application is protested by Ventura County Flood Control District which seeks under Applications 11310 and 11429 to appropriate a total of 10,000 acre feet per annum at the Casitas damsite some 3 miles below Applicant Alison's dam; by the City of San Buenaventura which is supplied mainly from Ventura River but which also diverts up to about 2 cubic feet per second from Coyote Creek, when reinforcement of the Ventura River supply is necessary; and by three water-users or small groups of water-users along Coyote Creek below the applicant.

The Ventura County Flood Control District applications are incomplete. Time necessarily will elapse before the projects thereunder can become operational. They are not therefore at this time a bar to the approval of Application 14560. The average runoff from the watershed above Applicant Alison's dam, estimated at 3611 acre-feet per annum or more, appears substantially in excess of the probable requirements of the other protestants.

The circumstances summarized point to the conclusion that unappropriated water exists at times in Coyote Creek and that such water, temporarily, may be taken and used in the manner proposed by the applicant without injury to any protestant. They indicate that unappropriated water has existed thus far when the flow at the gaging station on Coyote Creek has equalled or exceeded about 2.5 cubic feet per second, a condition that has obtained, on average, 109 days per season of published record; and that unappropriated water has existed at certain other times when flow is less than said amount and the water is not needed by the City of San Buenaventura. The circumstances indicate further that unappropriated water may cease to exist in Coyote Creek when and if the project envisioned under Applications 11310 and 11429 comes into operation. In view of the circumstances it is the opinion of this office that the benefit of such temporary use as may be made of water not yet required under the earlier applications should not be denied the applicant and that Application 14560 should be approved and permit issued, subject to the usual terms and conditions and subject also to a special term and condition alerting the applicant to the pendency of applications prior to her own.

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ORDER

Application 14560 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 14560 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 also to the following special term and condition, to wit:

Issuance of this permit shall not operate to the prejudice of any prior rights, including such rights, if any, as have been or may be acquired by Ventura County Flood Control District or its successors under Applications 11310 and 11429.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 16th day of December, 1953.



A. D. Edmonston

A. D. Edmonston
State Engineer