

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 14723 by Marcus Dykstra to Appropriate Water from an Unnamed Spring Tributary to Cajon Canyon, in San Bernardino County, for Domestic and Irrigation Purposes.

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Decision A. 14723 D. 809

Decided December 3, 1954

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Appearances at Hearing Held at San Bernardino on June 23, 1953:

For the Applicant

Markus Dykstra

In propria persona

For the Protestants

Edward J. Soehnel

No appearance

Robert G. Crinklaw)
Edith L. Crinklaw)

Edith L. Crinklaw

Melba R. Hrock

W. P. Rowe

Anaheim Union Water Company)
Santa Ana River Development Company)
Santa Ana Valley Irrigation Company)
Orange County Water District)

Rutan, Tucker, Howell & Tucker
By H. Rodger Howell

EXAMINER - LESLIE C. JOPSON, Principal 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, Department of Public Works.

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OPINION

General Description of the Project

The applicant seeks to appropriate 0.05 cubic foot per second, year-round, from an unnamed spring tributary to Cajon Canyon in San Bernardino County and located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T 2N, R 5 W, SBB&M. Diversion is to be effected from an open cut, dimensions unstated, conveyance from spring to place of use by means of a three-inch pipeline 1000 feet long. Four acres of general crops are to be irrigated, the irrigation season extending from about April 1 to about December 31. Domestic use is to include a supply for a one-half acre garden and the watering of ten head of cattle and one horse. The land to be irrigated is said to have no other water right or source of water supply.

Protests

Edward J. Soehnel protests, stating:

"Applicant in his filing is very indefinite about (his proposed point of diversion) and I am unable to determine same.

"I have an interest in the property as mortgagee. Applicant is at present digging holes along road to diversion dam serving property mortgaged, and endangering such access. Also all water from this creek has always belonged to the property covered by said mortgage Any water taken by the applicant would seriously damage the present owner ... and the within protestant."

Protestant Soehnel states that the claimed right to the use of water on the property on which he holds a mortgage is based upon "prior application by predecessor, use and riparian right" and he states further:

"All water is being used on the land now owned by Melba Hrock and will continue to be so used ... while Applicant Dykstra is very indefinite about the location, the ... protest is based on location which Ranger Smith of Forest Service advises is the proposed point of diversion.

"Hrock's point of diversion is the dam above location described above."

The protestant states that "his" point of diversion is located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T2N, R5W and states finally:

"I hereby respectfully request the Division ... to take prompt action in denying said application inasmuch as the owner of the property is suffering damage due to interference of such filing to negotiating a loan on property served by the water and in selling a portion of the property."

Robert G. and Edith L. Crinklaw protest the application,

stating:

"The point of diversion of this application is approximately 95' E and 300' S of the point of diversion given on our application 14613 The spring we have filed on is the only one in that immediate vicinity and since the amount we applied for was determined by the capacity of the spring any other filing would naturally interfere with ours.

"The spring is also located upon our mining claim.

"We began use of water on May 24, 1952."

These protestants describe their point of diversion as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T2N, R5W, SBB&M.

Melba R. Hrock protests, stating:

"I have interest in the property as owner. All water flowing from this creek has been utilized by natural irrigation of grazing land, and irrigation on upper Mesa, and has always belonged to my property. Applicant is digging holes on roadway to diversion dam, making access hazardous and impossible."

* * *

"We have used all water since we purchased the property, and believe ... that previous owners have always used all water."

* * *

"I hope an early hearing can be had and application of Dykstra denied, as his actions are causing injury to us in connection with getting a loan on the property and in attempting to sell it."

This protestant states that her point of diversion is located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T2N R5W; she claims riparian rights, also "rights to all the creek water by purchase of such rights from previous owners."

Orange County Water District protests, asserting in substance that:

1. It contains approximately 170,000 acres and derives its water supply from the Santa Ana River and tributaries,
2. That all water flowing in Santa Ana River and its tributaries has long been and is now appropriated and applied to beneficial use,
3. That diversion upstream from the District as the applicant proposes will result in the transfer downstream of a water deficiency to the lowest user on the river, i.e. to lands within the protestant District,
4. That Applicant Dykstra has no right to appropriate from the spring he describes or from any other source within Santa Ana River Watershed,
5. That the rights of lands within the District include riparian rights, rights of overlying owners and rights by appropriation,
6. That use under the rights mentioned began in about 1876, expanded rapidly and now cover the entire supply that reaches Orange County, that water is used for agricultural, domestic, municipal and industrial purposes, that use extends year-around, that during the irrigation

season the surface flow is diverted directly for that purpose by two large canal systems, that at other times the surface flow sinks underground pending recovery by pumping for various uses within Orange County Coastal plain, and that the natural percolating capacity of the river channel in Orange County is being maintained by the District by construction of artificial spreading works, and,

7. That the District, in protesting, represents many landowners within its boundaries who now apply and for many years have applied the waters under discussion, beneficially, by diversions heading at points scattered from the northern boundary to the southern boundary of the District.

Santa Ana River Development Company, Anaheim Union Water Company and Santa Ana Valley Irrigation Company protest jointly. They represent that the proposed appropriations will deprive them of water which they own and beneficially use, with resultant damage to them, to their stockholders and to all water users in Orange County that depend upon Santa Ana River as a source of water supply. They assert in effect that there is no unappropriated water in Santa Ana River or in any tributary thereto; that all waters within that stream system have long been appropriated and put to beneficial use. They base their claim of a right to the use of water upon the alleged fact that since about 1876 they have appropriated and beneficially utilized the entire surface and subsurface flow of Santa Ana River that reaches the Orange County line. They state that the water which they divert is used for agricultural, domestic, municipal and industrial purposes, that use extends throughout the year, that Santa Ana Valley Irrigation Company and Anaheim Union Water Company during the irrigation season divert the entire surface flow of Santa Ana River into their canal systems, and that all water

not diverted serves the useful purpose of recharging the ground water beneath their lands. They assert that their stockholders number more than 2000 and irrigate more than 20,000 acres. They state finally:

"... protestants will be put to considerable expense and effort in legal proceedings to protect their rights if the application is not denied.

"Protestants are mutual water companies consisting of numerous shareholders whose individual and joint rights to the continued use without interruption of the water sought to be appropriated by applicant are based on riparian rights, rights of overlying lands to ground water ... and the right of appropriators

"Protestants' diversion point is located at the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26, Township 3 South, Range 8 West, SBB&M.

"This protest may be disregarded under no conditions."

Answers

Applicant Dykstra answers the protests by the Crinklaws, Hrock and Soehnel by letter of July 14, 1952 in which he states:

"... my point of diversion is established below the point of diversion of any water used by Melba Hrock and it is self evident that any spring that I have filed on has never been in use on Melba Hrock's property. By their own admission in their protests of Melba Hrock and Edward J. Soehnel is evident that my diversion of water from these springs which are located below their point of diversion in the National Forest cannot in any way interfere with their full use of the water they have been using

"As to the protest from ... Crinklaw, the Forest Ranger, Mr. Crinklaw and myself made a trip to the point of diversion of the spring Mr. Crinklaw has filed on and his point of diversion is located approximately 500 feet West more or less of my point of diversion.

"I respectfully request the Division ... to take prompt action in denying these protests as much of it seriously

interferes with the development of my spring and hampers the development of much needed pasture land and also domestic use of this water."

No answers to other protests against the application are of record.

Hearing Held in Accordance with the Water Code

Application 14723 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 the California Administrative Code, Title 23, Waters, on Tuesday, June 23, 1953, in the City Council Chamber, City Hall, San Bernardino, California. Of the hearing the applicant and the protestants were duly notified.

Gist of Hearing Testimony

Applicant Markus Dykstra testified (pages 11 to 25 of transcript) to the effect that Mr. Crinklaw told him in the presence of Forest Ranger Smith "I will not protest your spring", that Mr. Crinklaw subsequently did file a protest, that he still hopes the Crinklaws will withdraw their protest. As to the Hrock protest he testified:

"... I can't see in any way that I hurt their spring, because I am way below their filing and their intake. And the small amount of water I take from that spring couldn't hurt them at all."

As to his belief that the protestants' objections are groundless he testified (pages 13 and 14 of transcript):

"... I feel that water is being picked up in the mountains and being used on property below, that ... I just don't own the water but I pass it on to someone else who can use it below.

"... I cannot keep the water. I put it in the ground, and it consequently has to come down below and be picked up and used again.

"... I just temporarily use it and pass it on for the next one to use it ... and pass it on; and perhaps that will go on three or four times before it goes down to the ocean and will be finally gone.

"So I don't see how I could hurt anyone, those who protest my claims, especially those water companies"

Applicant Dykstra testified further to the effect that he has developed so far about 1000 gallons per day, that further development is necessary, that it will consist of removing trees and rocks, that that water will be used for irrigation and domestic purposes, that his home is supplied from the Devore tract, that that supply cannot be transferred to any other tract, that he needs a supply for 23 acres which he owns in the Belmont tract, that there is no organized company or district from which those 23 acres can be supplied, that the diversion described in his application heads on federal forestry lands, that at present there is a small surface flow, that such flow extends year-round, that no one else except Mrs. Hrock takes water at points nearby, that Mrs. Hrock has a dam and a pond about 1000 feet upstream from the point that he (the applicant) is trying to improve, that he hopes to develop more water by digging deeper, say to bedrock, that he has lived in the area for more than 20 years, that no nearby streams flow year-round, that the land he is seeking

to improve has never been farmed before, that it is covered with brush, that so far he has cleared two acres, that he expects to clear four acres in all, that in winter when there is a good stream-flow water in the canyon in which the spring is located flows to within 200 feet of the highway and then disappears, that the flow is toward Cajon Canyon, which it would reach if flow were sufficient, that flow passing the spring, when sufficient, passes through the Hrock property.

W. P. Rowe testified (pages 27 to 39 of transcript) to the effect that the Hrock property is a part of Rancho Muscupiabe, that north of the ranch line is government property, that Ames Creek below the head of the Hrock pipeline crosses the government land and continues through the Hrock property to Cajon Creek, that at no time does it touch the Dykstra property, that the Hrocks own a right to divert into their pipeline, the latter having been built and used for over 20 years by the Hrocks' predecessors, that he is familiar with the Hrock property, having been at one time a part owner with Mr. Soehnel and Mr. Johnson, that the Dykstra land is not riparian to Ames Creek, that Ames Canyon as it enters the Hrock property is in a narrow channel on an alluvial cone, that it then enters a cienega or swamp caused by the crossing of Ames Canyon by San Andreas Fault, that water rises at that point and flows down Ames Canyon, that above the cienega flow is not continuous but below the cienega on the

Hrock property it is continuous, that the spring testified to by Mr. Dykstra, if uninterrupted, contributes to the over-all supply passing down Ames Canyon, that the water Mr. Dykstra is seeking to appropriate if undisturbed would reach the cienega, that the canyon has quite a heavy growth of alder and other water loving vegetation above and below the proposed point of diversion and extending to the cienega, that it has well defined banks and a bottom, that the flow of Ames Canyon if sufficient and uninterrupted would enter Cajon Creek and Santa Ana River and so on to the ocean, that such flow has occurred in flood years, that a continuous stream of a miner's inch or more escapes from the cienega, that the stream is used on the Hrock property for the support of pasture, that there is no unappropriated water within the area except flood flow and, excluding possible salvage of water by elimination of transpiration or evaporation losses, that the cienega extends onto the Dykstra property which, however, does not touch the flowing stream.

Paul Bailey testified (pages 39 to 54 of transcript) to the effect that he has been Engineer for Orange County Water District since its organization in 1933, that that District encompasses about 170,000 acres of coastal plain in Orange County, that its main source of water supply is the Santa Ana River, that the drainage of that stream converges at Prado, flows through a narrow canyon for about ten miles and emerges on the coastal plain at approximately the center of the District named, that the surface flow at Santa Ana River during the irrigation

season has long been diverted, that other flow reaching the coastal plain to a very great extent has been absorbed there by alluvium and fed into the large underground water basin whence it is recovered by pumping, that between 80 and 90 per cent of water used on the coastal plain is pumped from wells, fed mainly by Santa Ana River, that the assessed valuation of the lands within the District amounts to between \$500,000,000 and \$600,000,000, that the rapid growth in recent years in developing these values has overdrawn the supply available in the underground basin, necessitating supplementation from Colorado River, that such importation is currently costing about \$1,000,000 a year, that the full flow of the Santa Ana River both surface and underground reaching Orange County is in use and that no longer is there any unappropriated water. Witness Bailey testified further that for every acre-foot of new development in upper Santa Ana River watershed eventually, in his opinion, Orange County will have to buy and import one additional acre-foot, that flood flow ordinarily is entirely absorbed by the channel of Santa Ana River before it reaches the ocean, that only very exceptionally does water reach the ocean, that the amount of water reaching the ocean is insufficient to keep the channel clean and absorptive, that any taking of water from the upper portion of the watershed is transferred progressively downstream to the last possible user, that the net effect of any new diversion on the upper watershed is to reduce the supply reaching Orange County by the same amount, that two of the largest single water users within the Orange County Water District are the Santa Ana Valley Irrigation Company and the Anaheim Union Water Company, that those companies

together have been irrigating some 24,000 acres for many years, that formerly surface flow was sufficient for their needs but that they now, in dry years, have to pump 50 per cent or more of their water, that there is no unappropriated water in the Santa Ana River watershed, that he (the witness) visited the Dykstra property on June 16, 1953, that on that date Ames Canyon stream bed was dry, both above and below the applicant's spring, but that there was surface water for some 25 or 30 feet right at the spring, that the spring is at the foot of a steep declivity, that the character of the stream bed in Ames Canyon is unfavorable for surface flow, the stream bed being a loose sandy gravel deposit, that there is probably surface flow at times in Ames Canyon, that such flow would pass down the canyon and discharge onto the plain in the vicinity of Cable Canyon and there, except at times of extreme storms, go underground, that flow from extreme storms would drain through Cajon Creek and Santa Ana River into Orange County, that in his opinion subsurface flow follows the same general course as surface flow, that the flow of Ames Canyon contributes to the total supply reaching Orange County, that diversion from Ames Canyon would eventually affect the supply in Orange County, that when water is diverted as proposed by the applicant there is certain to be some consumption and the amount returned to the stream cannot but be less than the amount diverted.

Other Available Information

The report of a field investigation conducted September 5, 1952, by an engineer of the Division for the purpose of securing preliminary information in connection with the application contains, among others, the following passages:

"The source of the proposed appropriation is underflow of Ames Canyon, a steep ravine in the southwesterly slopes of the San Bernardino Mountains, and tributary to Cajon Canyon. The watershed above the proposed point of diversion contains about one square mile of steep mountain side moderately to densely covered with brush. Average annual rainfall over the area is about 30 inches.

"There was no surface flow in the canyon at the proposed point of diversion at the time of inspection but a short exploratory trench had small pools of standing water and a dense growth of alders and other water-loving vegetation in the bottom of the canyon evidenced a fairly good underflow.

"Protestant Hrock's predecessors had constructed a diversion some 500 feet up the canyon and about three-tenths of a second-foot was being diverted. The lowest measured flow in the fall of 1951, after seven dry years, was about 0.11 cubic foot per second.

"The San Andreas Fault passes in a generally northwest to southeast direction through Cajon Canyon and the applicant's and protestants' springs are all along the mountain margin of the rift zone.

"About one-quarter mile below the proposed point of diversion, where entering the valley fill, Ames Canyon divides and higher surface flow and subsurface flow is on both sides of a remnant of older valley fill. Lower surface flow is to the northerly side of the remnant."

"Edward J. Soehnel sold his property to Protestant Hrock and has a residual interest in the property so his basis of protest would be identical with Hrock's

"Robert G. and Edith L. Crinklaw's lower point of diversion, under Application 14613, lies some 600 or 700 feet north-westerly of the proposed point of diversion, and at about the same elevation so there can be no interference with their rights. Their diversion under Application 11394 is farther to the northwest and higher on the mountain side so there can be no interference with it.

"Melba R. Hrock's springs, under Application 14829, are in draws some distance to the southeast and at about the same elevation as the proposed point of diversion so interference with them is not probable.

"The Hrocks are purchasing about 300 acres of land below the proposed diversion and both distributary channels of Ames Canyon Creek cross their lands. Mr. W. P. Rowe ... stated that the property ... had never been subdivided and that the riparian rights had never been severed. Mr. Rowe formerly owned a divided interest in the property.

"The Hrock protest is based upon riparian rights and claim the diversion would destroy the natural growth along the stream channels on their property and interfere with sub-irrigation of proposed pasture lands.

"The Hrocks have recently purchased the property and are presently developing it. Water from the canyon is piped to the place and has been used in the past for irrigation of grain and domestic purposes and the Hrocks anticipate expanding the irrigation use.

"The proposed point of diversion and the proposed location of the pipe line are on an unpatented mining claim which is claimed by both the applicant and Protestant Crinklaw. If Crinklaw's claim is valid, access will probably be denied.

Streamflow is reported in Water Supply Papers of the United States Geological Survey for points within the Santa Ana stream system as follows:

Cajon Creek near Keenbrook, within Section 12, T2N, R6W, 1800 feet upstream from Lone Pine Creek. Record continuous since 1919.

Lytle Creek (east channel) at San Bernardino, at Mount Vernon Avenue Bridge. Record continuous since 1929.

Warm Creek near Colton, at Colton Avenue Bridge, 0.4 mile above junction of that stream with Santa Ana River. Record continuous since 1920.

Santa Ana River at numerous points including Fifth Street Bridge, Santa Ana, which is the lowermost point of measurement on the river and within about 9 miles of the river's mouth. Channel distances between "Cajon Creek near Keenbrook", "Lytle Creek at San Bernardino", "Warm Creek near Colton" and "Santa Ana River at Santa Ana" scale about 16 miles, 5 miles and 46 miles respectively.

According to the Water Supply Papers the flow of Santa Ana River practically never reaches the vicinity of Santa Ana during June, July, August, September or October, reaches that vicinity in fewer than half the months of May and November and is limited and erratic during 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 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."

Warm Creek near Colton according to the water supply papers, has discharged at rates ranging from 27,500 to 2.0 and averaging 53.4 cubic feet per second. Water Supply Paper 1181 states as to this point of measurement, in part,

" ... Meeks & Daley Canal ... diverts above station City of San Bernardino ... 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"

According to the published data monthly mean flows within the 30-year period of record have never exceeded the above stated carrying capacity of the Riverside Water Company Canal in either June, July, August, September or October and have only exceeded that value in a small minority of other months. This excess of canal capacity over average streamflow suggests that all upstream drainage is needed at Riverside Water Company Canal intake to satisfy existing June-October demand.

"Cajon Creek near Keenbrook" and "Lytle Creek at San Bernardino" are perennial streams, their minimum recorded flows being 2.0 cubic feet and 0.2 cubic foot per second respectively. According to the representation on the map, perennial flow extends below "Cajon Creek near Keenbrook" approximately to the latitude of the applicant's proposed point of diversion; and perennial flow resumes approximately at the latitude of the San Bernardino Base Line, leaving, apparently, a reach of normally dry sandy stream bed, some 10 miles in length. The spring on which the applicant has filed is about 1.5 miles distant from the thread of Cajon Canyon and the unnamed streams to which it is first tributary are mapped as intermittent streams. The point where the spring water might reach Cajon Canyon scales some 9 miles above "Lytle Creek at San Bernardino".

Filings other than Application 14723 to appropriate at points on the western slope of San Bernardino Mountains include:

Application 9448 Permit 5281 License 2680, Coverston, 0.02 cubic foot per second, year-round, from a spring within SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 21, T2N R5W, tributary to Cajon Canyon. Not protested.

Application 10323 Permit 5943, Johnson, 0.05 cubic foot per second from March 1 to November 1 and at other times as needed for domestic purposes, from a spring within SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21, T2N R5W, tributary to Cajon Creek. Not protested.

Application 10324 Permit 6805, Cunningham, 0.1 cubic foot per second from about April 1 to about November 1 and at other times as needed for domestic purposes, from 2 springs within NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21, T2N R5W. Protested because of apprehension of interference with neighboring developments.

Application 10891 Permit 6807, Johnson, 32,500 gallons per day from March 1 to about November 1 and at other times as needed for domestic purposes from an unnamed spring within SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21, T2N R5W. Protested by neighbor claiming rights to flow from same spring.

Application 11394 Permit 6791, Crinklaw, 0.05 cubic foot per second from about May 1 to about December 1 and at other times as needed for domestic purposes, from an unnamed spring tributary to Cajon Creek via Cable Canyon, within SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 22, T2N R5W.

Protested by Devore Water Company which claimed to divert within same quarter-quarter section, and alleged need by its own stockholders of the water sought by the applicant.

Application 12006 Permit 7378, Hall, 0.2 cubic foot per second, year-round, from Wilson Creek, tributary to Cajon Creek, within NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, T2N R5W. Protested on basis of alleged prior right to divert from the same source for use on neighboring properties. In report of field investigation made in connection with Application 12006, which relates to a nearby development where physical conditions may be supposed somewhat similar to those obtaining on the project under Application 14723, it is written:

"Wilson Creek is a steep wash in the westerly slope of the San Bernardino Mountains and is tributary to Cajon Wash. The watershed is within the San Andreas Rift Zone and is very irregular in contour, probably about one-half square mile in area and rising to an elevation of about 5000 feet. The steep slopes are covered with medium brush but in the bottoms of the draws and canyons are several small groves of trees. The contributing area to the underflow may be considerably larger than the surface area indicates."

Applications 12942 and 12943, San Bernardino County Flood Control District, 1200 acre-feet per annum to be collected from Cable Canyon between November 1 and April 30, at a point within NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 34, T2N R5W and applied to spreading grounds in the same Section 34 and the adjoining Section 35 for absorption into underground storage and eventual recovery by pumping and utilization for irrigation, domestic and municipal purposes many miles downstream. These applications and several related applications in the same name also contemplate

similar conservation developments at numerous other locations within Santa Ana River watershed. Such applications have been protested by the same down-river interests that protest Application 14723.

Application 14613 Permit 9006, Crinklaw, 650 gallons per day, year-round, from an unnamed spring, tributary to Cable Canyon, located at a point within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T2N R5W.
Unprotested.

Discussion

The protests by Hrock as owner and Soehnel as mortgagee, of the property in possession of the Hrocks, based mainly upon contentions that the proposed appropriation will hinder the sale of the Hrock property and the negotiation of a loan upon it, are insufficient to bar approval of the application. Protestant Hrock asserts that "all water flowing from the creek has been utilized" and has always "belonged" to her property yet she fails to establish how much water has been utilized on that property or that her supply would be lessened by the Dykstra development. The Dykstra project plainly cannot interfere with the Hrock diversion of surface flow, that diversion reportedly heading 500 feet farther up canyon than the applicant's proposed diversion. Evidence does not establish that it will interfere materially if at all with subirrigation or other benefit accruing from the passage of Ames Canyon through the Hrock lands. The Rowe testimony to the effect that below the cienega on the Hrock property flow is continuous engenders doubt

that the development proposed by Dykstra would materially alter present conditions on the Hrock property.

The protest by Robert G. and Edith L. Crinklaw insofar as based upon apprehension that diversion from the spring filed upon by the applicant would interfere with their own diversion under Application 14613 is unsupported by testimony and according to the report of the investigation of September 5, 1953, the Crinklaws' apprehension is groundless. The assertion in the protest that the spring from which Dykstra proposes to divert is located upon the Crinklaw mining claim introduces an issue which is beyond the jurisdiction of the Department to determine. While an appropriative right cannot be consummated until the applicant has obtained right of access to the proposed point of diversion the assertion by a protestant that right of access has not been obtained is not a bar to the approval of an application to appropriate.

The protests by Orange County Water District and Santa Ana River Development Company et al., both based mainly upon the premise that the flow of Santa Ana River and its tributaries is needed in its entirety to satisfy downstream rights of long standing are likewise insufficient bases for denial of the application. Without doubt vested rights attach to all tributary drainage capable of reaching the points of diversion of these protestants. Obviously, however, fractions of that drainage never reach those points of diversion

but instead are lost by evaporation and/or transpiration en route. Insofar as such fractions can be captured and utilized beneficially by parties upstream without diminishing the flow that carries through to the holders of vested rights, they are subject to appropriation. The mention in the report of investigation of a dense growth of alders and other water loving vegetation in the bottom of the canyon at the proposed point of diversion indicates that evapotranspiration losses occur in that locality. It is logical to infer that the water so lost could be taken and used as the applicant proposes without diminishing the flow available at points downstream. Again, according to the United States Geological Survey data -- quadrangles and streamflow records -- underflow passing the applicant's proposed point of diversion would have to traverse some nine miles of the normally dry stream bed of Cajon Canyon and Lytle Creek before surfacing, near San Bernardino. In view of the slow rate at which water travels underground, the argument of the down-river protestants that the 0.05 cubic foot per second sought by the applicant is capable of utilization by them or that they would be injured by its capture and use in the manner that the applicant proposes, is unconvincing.

Summary and Conclusions

The applicant seeks to appropriate 0.05 cubic ^{foot per second} from an unnamed spring in Ames Canyon, tributary via Cajon Canyon and Warm Creek to Santa Ana River, year-round, for domestic purposes and irrigation. The application is protested by Edward J. Soehnel,

mortgagee, and Melba R. Hrock, owner of a property approximately a quarter mile below the proposed point of diversion, by Robert G. and Edith L. Crinklaw, owners of nearby but off-stream property who apprehend that the applicant's proposed diversion will interfere with the yield of springs from which they derive their supply, and by two down-river interests — Orange County Water District and Santa Ana River Development Company et al. — who contend that Santa Ana River and its tributaries are fully appropriated and that they will be injured by diversion of any waters, whether surface or underground, within the Santa Ana River system. From the information at hand, including information secured by field investigation on September 5, 1952 and testimony at hearing conducted on June 23, 1953, it appears that the up-river protestants — Soehnel, Hrock and the Crinklaws — will not be injured by the proposed appropriation and, when return flow and the numerous channel losses, artificial diversions and tributary contributions are taken into consideration, it appears highly probable that the diversion of 0.05 cubic foot per second as proposed by the applicant, so far upstream, will have no appreciable or material effect upon the supply available to the down-river protestants.

In view of the situation above summarized it is the opinion of this office that unappropriated water exists at the point at which the applicant seeks to appropriate, that the protestants' objections to approval of the application are insufficient and that the application therefore should be approved and permit issued subject to the usual terms and conditions.

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ORDER

Application 14723 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 14723 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 3rd day of December 1954,



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