

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 15850 by Cecil W. Dougherty to
Appropriate Water from an Unknown Spring, Tributary via an
Unknown Stream to South Fork San Jacinto River, in Riverside
County, for Domestic, Irrigation, and Fire Protection Pur-
poses.

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Decision A 15850 D 834

Decided September 7, 1955

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In Attendance at Investigation Conducted by the Division of
Water Resources on June 3, 1955:

Cecil W. Dougherty	Applicant
Mrs. Dougherty	Applicant's wife
Minnie Tyler Lee	Protestant
Robert T. Lee	Protestant Lee's son
Donald D. Stark)	Protestant Lee's attorneys
George Grover)	
J. J. Heacock Senior Hydraulic Engineer Division of Water Resources Department of Public Works	Representing the State Engineer

n.b. The protestant Fruitvale Mutual Water Company was not represented at the investigation but Mr. Bedford Cansler, its general manager, was interviewed later.

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DECISION

General Description of the Project

The application initiates an appropriation of 3,600 gallons per day, year-round, from an unnamed spring, tributary to an unnamed stream, the latter tributary to South/^{Fork}Jacinto River. The spring is said to be located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 26, T5S R3E, SBB&M, in Riverside County. The project includes a concrete spring box, a 5,000 gallon redwood regulating tank, 2700 lineal feet of 1-inch diameter steel pipe. The water is to be used for domestic, irrigation and fire protection purposes at a place of use 20 acres in extent, located within the SE $\frac{1}{4}$ of Section 27 of the same Township. Two houses occupied by 6 people are to be served, 6 horses and 10 head of cattle watered, 20 acres of pasture irrigated. Irrigation is to extend from May to September, both inclusive. The application is silent as to any other water right or source of water supply. The applicant claims to own the proposed place of use but not the land at the proposed point of diversion. As to the latter, he states that application has been made for a special use permit from San Bernardino National Forest.

Protests

Fruitvale Mutual Water Company protests that the proposed diversion would deprive it of the flow to which it is

entitled under its Permit 468. Protestant claims to have been using all of the water available at its points of diversion at all times except during heavy floods and asserts that its stockholders irrigate over 5,000 acres and use, beneficially, for that purpose, some 11,000 acre-feet annually. It states that it diverts at points within Sections 4, 5 and 10 of T5S R1W, SBB&M. It is silent as to terms under which its protest may be disregarded and dismissed.

Mrs. Minnie Tyler Lee protests that the amount applied for is more than the spring produces and that the diversion that the applicant proposes would deprive her of all of the water she is using, her use being for domestic purposes, irrigation and stockwatering. She states that her protest may not under any circumstances be disregarded and dismissed. Other statements in her protest are as follows:

"My diversion point is the same as that of the applicant's and just a few yards from my land."

"This spring has contributed water to a storage reservoir on our land, constructed prior to 1914 - water from the reservoir has been continuously used for irrigation and cattle. Mr. Lee developed this spring in 1947 and ran a pipe line to my house in NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 26. The water has been used for domestic purposes continuously ever since. The natural flow of the spring which is a few yards upstream from my land, is onto my land and the water has always drained onto a meadow on our land."

Answers

The applicant's answer to the protest by Fruitvale Mutual Water Company is to the effect that protestant cannot

positively establish that water from the spring in question reaches its points of diversion, 18 miles distant, that protestant has no right of access to the spring and has made no improvements upon it; that water issuing from the spring is absorbed into the ground within the immediate vicinity and will continue to be so absorbed, for the most part, if used as proposed in the application. He states among other things:

"I am at a loss to understand how under any circumstances, the protestants could measureably appreciate this water at their point of diversion."

In answer to the Minnie Tyler Lee protest, the applicant states:

"The sum and substance of Mrs. Lee's protest are incorrect, except possibly the capacity of the flow when completely developed. The facts are: 1. The spring was diverted sometime between 1951 and 1952. 2. Mrs. Lee has quite a few springs developed and undeveloped on her property, and which she has not put to a useful purpose. 3. A recent examination of the records in Sacramento did not reveal Mrs. Lee has any legal claim on water in the area of the application."

Field Investigation

The applicant and the protestants, with the approval of the Division, having stipulated to the submittal of the application and protests upon the official records of the Division, a field investigation was conducted on June 3, 1955. The applicant and Protestant Lee were present during the investigation. The protestant Fruitvale Mutual Water Company was not represented at the investigation but Mr. Bedford Cansler, its general manager, was later interviewed.

Records Relied Upon

Applications 924 and 15850 and all data on file therewith.

Information Secured by Field Investigation

Extracts from the report covering the field investigation on June 3, 1955, are as follows:

"The unnamed spring is a small cienega lying in the easterly slope of a moderately steep hill side. It is about 20' in elevation below the top of the slope which breaks away into higher bench lands; and is about 80' higher in elevation than the meadow lands along the unnamed stream. The hillside around and below the spring has a light covering of ferns and a fair stand of coniferous timber. Flow from the spring was measured at about 2200 gpd, and was stated to be very stable. The wash from the spring to the valley floor is very small, indicating that there has been no large flow, and enters the unnamed stream on protestant Lee's land, immediately above an old dam, probably in the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 26, and over three-eighths mile above the property of the applicant."

"The proposed place of use is on bottom and low bench lands along the right, or westerly, side of the unnamed stream, and may be riparian thereto. The applicant has a small developed spring on his property, but the supply is inadequate for his proposed uses."

"The spring is approximately 5 $\frac{1}{2}$ miles upstream from Lake Hemet Dam, which in turn is over 12 river miles upstream from the upper point of diversion of the Fruitvale Mutual Water Company. The unnamed stream was flowing about 0.10 cfs at the old Lee dam, at the time of the investigation, and all of the water disappeared within about one-quarter mile. The stream channel was inspected for about one mile below the old dam; the upper one-quarter mile had a moderate to heavy willow growth along the thread of the stream to about the point where the water disappeared. Two sections of exposed, dry bedrock were found athwart the channel, one being about one-half mile below the old dam and the other about one mile below the dam."

"Leakage through Hemet Dam has been estimated to be about 10 gallons per minute, and there are many areas of heavy willow growth along the channel to the Water Company's diversion."

"The drainage area above the Fruitvale Mutual Water Company's intake is about 140 square miles; above Hemet Dam, about 67 square miles, and about one-quarter square mile above the spring. It is evident that the proposed diversion would not have any serious effect on the Water Company's supply."

"Mr. Cansler stated that their protest was more a matter of policy than a serious protest against the diversion."

"In 1947, Mrs. Lee had one section of 15" concrete pipe set vertically in the main spring area, and 400 or 500 feet of one-inch pipe was laid to the meadow above the old dam, for irrigation. The pipe was extended to a small reservoir above the house in 1951, and is now the domestic supply on the property. Overflow from the tank is used to water about 5 acres of old orchard, and for stockwater."

"The Lee place is an old homestead that was a permanent home for many years. At present, domestic use is mainly over weekends, and a varying number of stock are run on the place."

"The easterly tie to the point of diversion, as given in the application, indicates that the spring is on Forest Service land, about 10' westerly of and outside of Mrs. Lee's property, but on the ground it lies about 100' westerly of the fence that is supposed to mark her westerly boundary."

"Mrs. Lee does not have an appropriative right to the use of the water; neither does she have a Forest Service Special Use Permit for the pipe line. Her property is definitely riparian to any flow from the spring."

"Due to the location of the spring, near the top of the slope, it is considered very doubtful that a larger sustained flow could be developed."

"Due to the small production of the spring, the flow characteristics of the unnamed stream to which it is tributary, and the presence of numerous phreatophytes along the channels, the development would have little effect on the supply of Protestant Fruitvale Mutual Water Company."

"Operation records of Lake Hemet Reservoir and stream flow and ground water records for the lower river area are available, but the contribution of the spring to the water supply is so small, about 2½ acre-feet per year, that extensive studies would be useless."

"Mrs. Lee undoubtedly has a riparian right to the flow from the spring, and it does not appear that a sufficient amount above her right could be developed to warrant the development under the application."

Discussion

The information contained in the report of field investigation to the effect that the yield of the spring is piped to Protestant Lee's property and there utilized in full and to the effect that the yield of the spring probably cannot be developed further indicates that the entire yield, whether present or potential, is fully utilized by Protestant Lee. The uses to which the spring water is put on the Lee property - domestic uses, irrigation and stockwatering - are beneficial uses.

Inasmuch as the waters from the spring reportedly traverse Protestant Lee's land and enter "Unnamed Stream" which also traverses Protestant Lee's land, the latter appears to be riparian to the spring and Protestant Lee so claims.

When the yield of a source is being used in its entirety, beneficially, by a riparian owner and cannot be otherwise intercepted or diverted without detriment to said owner, no portion of that yield may be considered subject to appropriation.

Conclusion

The data indicate that unappropriated water seldom if ever exists in the unnamed spring described in the application and that diversions from that source in the manner proposed by the applicant would prevent use of the same waters by a downstream protestant who uses them beneficially and appears entitled to so use them, under color of riparian right. In view of the apparent non-existence of unappropriated water in said unnamed spring at practically all times, it is the opinion of this office that Application 15850 should be denied.

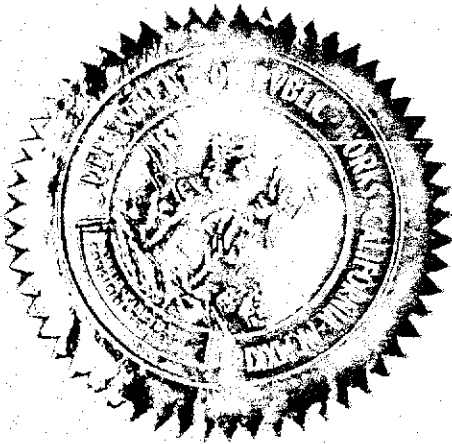
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ORDER

Application 15850 having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15850 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 7th day of September, 1955.



A. D. Edmonston

A. D. Edmonston
State Engineer