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 15430 by Robert F. Fowler to Appropriate Water from Six Unnamed Springs Tributary to Ward Canyon and from Ward Canyon Tributary via Agua Caliente Creek to San Luis Rey River, in San Diego County, for Domestic, Irrigation and Stockwatering Purposes.

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Decision A 15430 D 847

Decided February 15, 1956

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Appearances at Hearing Held at San Diego on September 14, 1955:

For the Applicant

Robert F. Fowler	In propria persona

For the Protestants

San Luis Rey Heights Mutual Water Company	No appearance
Carlsbad Mutual Water Company	T. Bruce Smith, Attorney at Law
Vista Irrigation District Escondido Mutual Water Company	Leroy A. Wright, Attorney at Law

EXAMINER - LESLIE C. JOPSON, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works, for A. D. EDMONSTON*, State Engineer.

* Retired November 2, 1955.

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DECISION

Substance of the Application

The applicant seeks to appropriate 0.12 cubic foot per second, year-round, from any or all of six springs tributary to Ward Canyon. He also seeks to appropriate 26 acre-feet per annum from flows occurring in Ward Canyon itself, that amount to be collected between November 1 and April 30 of each season and stored in an on-stream reservoir. The water is wanted in both instances for domestic, irrigation and stockwatering purposes. Ward Canyon is tributary via Agua Caliente Creek to San Luis Rey River, in San Diego County. Two of the springs are within the SW¼ of Section 11, one spring is within the NW¼ of Section 14; the three remaining springs and the reservoir site are within the NE¼ of Section 15; all within T10S R3E, SBB&M. The applicant seeks to obtain a domestic supply for eight people, to water 50 head of cattle and to irrigate 60 acres of pasture, the place of use being located at about the center of the Section 15 mentioned. The project includes 3,000 lineal feet of 2-inch diameter pipe and an earth dam 25 feet high by 830 feet long, the latter creating a reservoir 3.5 acres in surface area, 26 acre-feet in capacity. The applicant claims to own the proposed place of use which also includes the reservoir site and one of the springs. He disclaims ownership of the other springs or right of access

thereto; he states that those springs are within Cleveland National Forest and that application will be made for a special use permit.

Protests

San Luis Rey Heights Mutual Water Company protests the proposed appropriation, asserting that the latter would reduce its (the protestant's) water supply. It claims riparian rights, states that it diverts at points within Lots 74, 75 and 76 of San Luis Rey Heights Tract, that its service area includes 1,626 acres of farm land, that it uses approximately 1,600 acre-feet of water per year, that its use commenced in 1944 and extends year-round, that water levels at its wells were dangerously low in 1951 and 1953 and that diversion as proposed by the applicant would aggravate that condition.

Carlsbad Mutual Water Company protests that

> "the proposed appropriation ... will contribute to the depletion of the surface and subsurface flow which we require to recharge the underground water bearing formation of the Mission Basin of San Luis Rey River, said Mission Basin being the principal source of irrigation and domestic water .... Recorder well ... indicates the water table at this location is now below sea level."

This protestant claims a water right based upon riparian ownership, upon past use and upon an appropriation under Application 8205 Permit 5228. It states that its original plant was completed prior to December 19, 1914, that its use extends year-round,

that it has pumped up to 3,559 acre-feet in a single year. It states further that the water it diverts is put to beneficial use in the City of Carlsbad on an area of 2,000 acres inhabited by 7,000 people, for domestic, irrigation and recreational purposes, also for fire control and municipal purposes, that its diversion point is located within the NE¼ SW¼ of Section 18, T11S R4W, SBB&M. Finally it states that its protest may be disregarded and dismissed

> "if the diversions ... are limited to years of abnormal stream flow and if period when Mission Basin is completely charged with water ...."

Vista Irrigation District protests against the approval of the application for the asserted reason that

> " ... District, as successors to San Diego Water Company, has appropriated all water on the San Luis Rey River and its tributaries rising above Lake Henshaw, any increase upstream will result in a diminution of the amount of water available...."

It bases its claim of a right to the use of the water in question upon "prior application, actual use and diversion". As to its present and past use it states

> "Flood gates on Lake Henshaw were closed on December 25, 1922. All available flow in the San Luis Rey River at Lake Henshaw since that date has been impounded and diverted for beneficial use to the extent of approximately 20,280 acre-feet per year."

Its diversion point, it states, is located within the NE¼ NW¼ of Section 10, T11S R2E, SBB&M. It is willing that its protest be disregarded and dismissed "if applicant's use is

restricted to a riparian use of water to which applicant is entitled as a riparian owner". A supplement to the protest contains statements to the effect that Vista Irrigation District owns Warner Ranch comprising some 40,000 acres and lying generally in the broad valley area immediately below applicant's project; that District owns Henshaw Dam and Reservoir, which reservoir is the source of supply for District's service area comprising some 18,000 acres in and about Vista; that Henshaw Reservoir also furnishes most of the supply distributed in the Escondido area through Escondido Mutual Water Company; that Henshaw Dam was constructed in 1921-22 by San Diego County Water Company; that annual releases from Lake Henshaw, in acre-feet, in satisfaction of contractual commitments are:

Rincon Indians	600
Escondido Mutual Water Company	6,150
Vista Irrigation District	13,200
Bennett Mutual Water Company	330
Total	20,280

The supplement further sets forth that according to an exhaustive, recent study, under the assumptions of that study, the long time use of the inflow to Lake Henshaw will average about 18,500 acre-feet per year, equivalent to 73.5 per cent of the long time mean inflow, a percentage that District believes to represent efficient utilization of available supply, considering the variability of inflow and the resulting need for long

period storage. The supplement also presents the argument that since the lake has never spilled and all water collected therein has been put to beneficial use, no waters tributary to the lake are unappropriated.

Escondido Mutual Water Company also protests Application 15430, alleging that the diversions proposed thereunder would deplete the supply reaching its own diversion near the boundary between Sections 32 and 33, T10S R1E, SBB&M. It bases its claim of a water right upon an appropriation initiated by Escondido Irrigation District, its predecessor, in 1893, and upon prescription. It states that its protest may be disregarded and dismissed if applicant's use is restricted to such use as he may be entitled to as a riparian owner.

Answers to Protests

The applicant answers each protestant by stating that he cannot see how the diversions he proposes can affect that protestant, that the springs he has filed upon sink within 100 feet of the points where they rise, and that to the best of his knowledge the springs have never been used by anyone.

Hearing Held in Accordance with the Water Code

Application 15430 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 Wednesday, September 14, 1955, at 2:00 o'clock p.m. in the Board of Supervisors' Hearing Chamber, San Diego, California. Of the hearing the applicant and the protestants were duly notified.

Hearing Testimony

Relevant testimony by witnesses at the hearing of September 14, 1955, was in substance as follows:

Robert F. Fowler, the applicant, testified (pages 5 to 7 and 11 to 18 of transcript) to the effect that the unnamed springs filed upon are on government property, that no work has been done on them for over 20 years, that the water issuing from each spring flows no more than from 50 to 80 feet before disappearing into the ground, that he built his dam on Government advice and with Government assistance, that the dam extends down to solid rock, that his holding includes 112 acres of which about 50 acres are tillable, that he put down a well which cost $3,500 but produces far less than he needs for stockwatering and irrigation, that during his 3 years of ownership he has

planted crops twice but both crops have failed, that 68 of his 210 pigs died within a day and a half for lack of water, that the lake mentioned in the application now contains a little water but was completely dry until a recent rain. On cross examination Applicant Fowler testified to the effect that there is probably some seepage through his dam as through all earth dams, but that the dam is a well built dam, that water that issues from the springs is probably absorbed by vegetation before reaching the dam, that if any water from the springs should reach the dam the latter would intercept it, that water passing the dam would flow naturally into Lake Henshaw except as dissipated en route, that the year the dam was built there were 12 or 14 days of spillage over the dam yet the water that spilled did not flow beyond the boundary of his property, that his $3,500 well is 209 feet deep and produces about 25 gallons of water per minute, that water stood at 68 feet when the well was drilled, that since that time the ground-water level appears to have fallen, that spillage occurred the winter following construction of the dam, that water remained in the reservoir for about 8 months, that no water was released from the reservoir except for the purpose of testing the outlet valve, that there has been no further inflow into the reservoir except once, at the time of a summer rain.

Richard A. Smith, engineer and assistant manager of Vista Irrigation District, testified (pages 18 to 39 of transcript) to the effect that he is a graduate irrigation engineer, that he has been employed by Vista Irrigation District for 5 years, that he is charged with supervision over the district's pumping project and with general watershed management, that he collaborated with Consulting Engineer S. T. Harding in preparing a report on the net safe yield of the watershed tributary to Lake Henshaw. He testified further to the effect that demands upon the releases from Lake Henshaw include demands for deliveries in satisfaction of rights of the Indians at Rincon, rights of Escondido Mutual Water Company and rights in the name of San Diego Water Company, that these rights are recognized by Vista Irrigation District in contracts with those parties, that contractual rights aggregate approximately 19,800 acre-feet, delivered, to which an allowance has to be added to cover transmission losses to points of delivery, that it was Consulting Engineer Harding's conclusion based upon his study as to net safe yield that Vista Irrigation District could safely release an average of 17,500 acre-feet without overly withdrawing from the pumping basin. Witness Smith also testified in supplementation of the table on page 11 of the Division's report upon Application 15430 and in explanation of Vista Irrigation District's Exhibits 2 and 3. He

testified that in his opinion the water supplying the aquifer from which Vista Irrigation District pumps has the same origin as the surface inflow into Lake Henshaw and enters the aquifer at points around Warner Valley of indefinite location but mainly at points along the edges of that valley. He testified further that in his opinion there is demand from Lake Henshaw for more water than enters that lake, and that the entire outflow from Ward Canyon is needed to satisfy pumping demands within the basin below the applicant's point of diversion. On cross examination he testified that Vista Irrigation District owns Lake Henshaw, that the waters of the lake are used for irrigation and domestic purposes, that present demands exceed supply, that a great many tourists visit Lake Henshaw and perhaps consume an average of 10 gallons per day each, that the chance of water from the springs filed upon by the applicant reaching Lake Henshaw is small.

Kenneth Q. Volk testified (pages 41 to 55 of transcript) to the effect that he has been a consulting engineer in the water works field for over thirty years, that he is familiar with Lake Henshaw and with the Warner Ranch, that one John P. Buwalda was once employed by Escondido Mutual Water Company to report on the Henshaw underground basin, that he (Mr. Volk) was detailed to accompany him, that Mr. Buwalda concluded and he (Mr. Volk) agreed that the strata feeding wells in Henshaw

Basin "feather out up to the surrounding foothills", along the edge of which their recharging mainly occurs. Mr. Volk further testified to the effect that surface flow in Ward Canyon, in his opinion, would, when sufficient, pass into Lake Henshaw and also in part would seep into the gravels underlying Henshaw basin west of Ward Canyon; that in his opinion the flow from the springs described in the application is very minor, that very little of it would reach Lake Henshaw, that it might well be unappropriated; that water emanating from Ward Canyon would tend to recharge the gravels in the underground basin and if sufficient would reach Lake Henshaw; that in his opinion applicant's dam operates to diminish inflow into Lake Henshaw; that in his opinion no unappropriated water reaches applicant's dam.

Information from Other Sources

Extracts from a document entitled "Report of Division of Water Resources on Application 15430" are as follows:

> "The purpose of this report is to present available factual data regarding protested Application 15430."
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> "The ... information contained in the report (has) been obtained from the file of Application 15430 and other public records, from discussions ... and from observations made by a representative of the Department on January 20, 1955."
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> "Spring #1 is at the upper end of a small cienega at the head of Ward Canyon. . . . Flow was measured at three gallons per minute and it was stated that low flow in the late summer was about one-half that amount."

"Spring #2 emits ... in the left bank of the channel of Ward Canyon. . . . Flow was measured at about one gallon per minute. It was stated ... that it is perennial, decreasing to about 50 per cent of the present flow in the late summer."

"Spring #3 is in a small swale in a low bench about 30 feet from the left bank of Ward Canyon .... Flow was about 400 gallons per day and it was stated ... that it is stable throughout the year."

"Springs #4 and #5 are accretions in the bottom of Ward Canyon and present flow is negligible."

"Spring #6 is a seepage in the left bank of a small ravine, northerly of and adjacent to Ward Canyon. . . . Flow was estimated to be about 400 gallons per day and should be stable."

"Storage Dam. . . . The dam was constructed in the fall of 1953 with technical and financial assistance from the Soil Conservation Service."

"The dam is an earthfill structure located at the mouth of Ward Canyon ...."

"The surveyed surface area of the reservoir is about 3.5 acres and the capacity is about 26 acre-feet."

"The reservoir filled during the winter of 1953-54 and water flowed through the spillway for about 20 days. There was no surface flow into the reservoir at the time of the visit and the water surface in the reservoir was at the level of the outlet pipe."

"The proposed place of use includes about ten acres of level bottom land that is probably riparian to Ward Canyon and about 29 acres of generally moderately sloping land that can be cropped. . . . Irrigation will be by portable pipe and sprinklers."

"Henshaw Dam was constructed in 1922 and the gates were closed on December 25, 1922. . . . A survey in 1950 indicates the capacity is 193,420 acre-feet. The dam effectively controls the river flow and since the gates were closed there has been no flow through the spillway."

"A period of below normal precipitation started in 1943-44 and by 1950 the water conditions were so serious that the District drilled and equipped 30 wells with pumps, in the ground water basin.... Pumping from the basin commenced in November 1950. The water is pumped into ditches and flows by gravity to the reservoir."

"Ward Canyon and the unnamed springs lie between the San Luis Rey River and Caliente Creek, the two main tributaries above Henshaw Dam, and Ward Canyon enters the valley floor between the two streams about three miles easterly of the Lake Henshaw high water line. The watershed above the applicant's dam contains about 1.84 square miles...."

"The drainage area above Henshaw Dam is about 206 square miles...."

"Ward Canyon is not only tributary to Lake Henshaw but also to the ground water basin presently being pumped by the Vista Irrigation District."

"A visit to the area ... was made by the writer on January 20, 1955 and the applicant and representatives of all the protestants were interviewed."

"The Vista Irrigation District operates the Henshaw Reservoir (Lake Henshaw), and releases their own, contract, and other water into the river channel, whence it flows about nine miles to the Escondido Mutual Water Company's intake weir. The released water, plus the natural inflow between the dam and the weir is diverted into the canal, and all, except the Rincon Indian rights, is exported from the watershed to the service areas of the Escondido Mutual Water Company and the Vista Irrigation District. The Indian rights are released through a powerhouse, back to the San Luis Rey River."

"Below the Escondido intake weir the River flows about three miles through the canyon into the Rincon area, thence through the Pauma and Pala areas and through Monserate Narrows into Bonsall Basin, thence through the Bonsall Narrows into Mission Basin and to the Pacific Ocean."

"The San Luis Rey Heights Mutual Water Company's pumping field is in Bonsall Basin, about 25 river miles below Escondido weir and 34 miles below Henshaw Dam."

"The Carlsbad Mutual Water Company's wells in Mission Basin are about 37 river miles below the weir and 46 miles below the dam."

"Any return water from the Vista Irrigation District's service area in the San Luis Rey watershed would enter the river in the Bonsall Narrows or upper Mission Basin sectors, so would be below the San Luis Rey Heights Mutual Water Company's diversion but above the diversion of the Carlsbad Mutual Water Company."

"During the summer and fall months the natural flow from the springs is probably entirely lost by evapo-transpiration processes. During the remainder of the year, and particularly during the rainy season, a portion of the flow from the springs and the run-off from Ward Canyon undoubtedly contribute to the District's pumping field and Henshaw Reservoir, as surface or subsurface flow."

"The appropriation would directly adversely affect the Vista Irrigation District to a small degree, would possibly have a small adverse effect on the Escondido Mutual Water Company and a much lesser effect upon the Carlsbad Mutual Water Company and no apparent effect on the San Luis Rey Heights Mutual Water Company."

Other filings before the Division to appropriate from San Luis Rey drainage above Henshaw Reservoir are:

Application 8150 Permit 4540 - A. D. Myers and B. J. Chamberlin - for 0.1 cubic foot per second from a spring within Section 16,

T10S R3E, SBB&M, for domestic purposes and irrigation. The application was not protested.

Application 12177 Permit 7668 - Martin Grammer - for one miner's inch of water to be diverted from an unnamed tributary of San Luis Rey River at a point within Section 13, T10S R2E, SBB&M. The application was protested by Vista Irrigation District, Carlsbad Mutual Water Company and Escondido Mutual Water Company. After a field investigation in which the parties participated the protests by Vista Irrigation District and Escondido Mutual Water Company were voluntarily withdrawn, those protestants intimating that while the diversion of storm water would be objectionable to them the diversion in summer time of the small amount sought by Applicant Grammer would have negligible effect upon operations at Henshaw Reservoir.

Discussion

From the testimony to the effect that Henshaw Reservoir has not spilled since its outlet was closed in 1922 and that demand upon waters stored in that reservoir exceeds inflow thereto, it follows that, unless during wetter years than have occurred since 1922, all drainage that is tributary to and actually reaches Henshaw Reservoir is put to beneficial use and that none of it is subject to appropriation.

In view of the testimony to the effect that waters flowing in Ward Canyon, if unhindered by the applicant, either

reach Henshaw Reservoir as surface flow or, by percolating underground, contribute to the sub-surface supply from which Vista Irrigation District pumps into Henshaw Reservoir, the flow in Ward Canyon plainly is not subject to appropriation.

The applicant's testimony as to the small yield of the springs and the short distance within which the outflow of each disappears, Witness Volk's testimony as to the unlikelihood of the spring water reaching Henshaw Reservoir and the Division investigator's observation that in summer and fall the yield from the springs is probably lost by evapo-transpiration, suggest strongly that the flow that issues from the springs in a state of nature is ordinarily dissipated before it can be taken under control by Vista Irrigation District, the nearest protestant. Only at times, apparently, when surface flow occurs in Ward Canyon can waters naturally emanating from the springs merge with that flow and so reach Henshaw Reservoir or the gravels from which the protestant District pumps. In the light of the applicant's testimony such times may be supposed rare, and the amounts of spring water becoming available in that manner to any protestant, negligibly small. Since the diversion by the applicant of such negligibly small amounts would not injure any downstream user materially the yield of the springs in a state of nature may be considered subject to appropriation. That yield on January 20, 1955, was observed by the investigator to aggregate approximately 4.56 gallons per minute, equivalent to approximately

6,560 gallons per day. Any substantial, additional yield that the springs might be made to produce, as by excavation or other development, would not appear subject to appropriation; the diversion and utilization of such additional yield, in the absence of a showing to the contrary, appearing to be an encroachment upon protestants' existing rights.

Conclusion

From the hearing testimony and from the information obtained by field investigation it is concluded that the natural yield of the six springs in question may probably be taken and used in the manner proposed without material injury to any downstream user and that such water which ranges in amount up to some 5 gallons per minute or possibly a trifle more is subject to appropriation; but that any additional yield resulting from artificial development of the springs is not subject to appropriation. It is further concluded that flows occurring in Ward Canyon are ordinarily needed in their entirety to satisfy rights to store in Henshaw Reservoir and that such flows therefore are not subject to appropriation. In view of these conclusions it is the opinion of this office that Application 15430, insofar as it relates to diversion from the six springs described therein should be approved in the reduced amount of say 8,000 gallons per day and a permit duly issued; but that the application, insofar as it relates to diversion or collection in storage of the flow in Ward Canyon, should be denied.

This office keenly regrets the financial loss that the applicant may have sustained in proceeding with construction without first obtaining competent assurance as to the existence of unappropriated water in the source upon which he depends. Under the law, however, as set forth in the State Water Code this office for reasons above stated can do no other than to deny his application insofar as it contemplates appropriation of flowage in Ward Canyon and to qualify sharply its approval of the portion of the same application relating to appropriation from the six described springs.

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ORDER

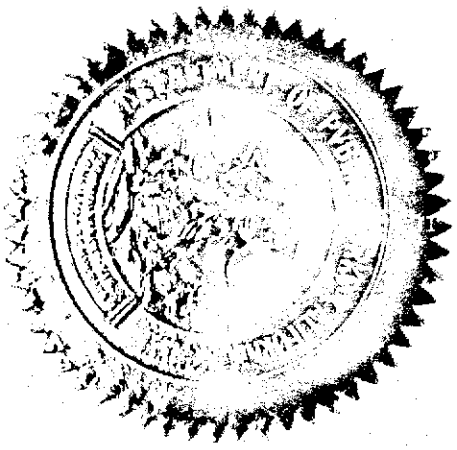
Application 15430 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15430 insofar as it relates to a diversion of 0.12 cubic foot per second from six unnamed springs tributary to Ward Canyon be approved in the reduced amount of 8,000 gallons per day and that a permit in such reduced amount be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate.

IT IS FURTHER ORDERED that authorization to divert under Application 15430 from such flow as may occur in Ward Canyon itself be denied.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 15th day of February, 1956.

HARVEY O. BANKS, STATE ENGINEER



By _____
L. C. Jopson
Assistant State Engineer