

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 15131 by Northshore Development Corporation to appropriate water from an unnamed spring, tributary via Grout Creek to Big Bear Lake, in San Bernardino County, for domestic and recreational purposes.

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Decision A 15131 D _____ 860

Decided _____ July 3, 1956

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Appearances at Hearing Held at San Bernardino on May 15, 1956:

For the Applicant

Northshore Development Corporation Ralph O. Chick,
Applicant's Vice President

For the Protestants

Orange County Water District)
Santa Ana River Development)
Company et al.) H. Rodger Howell,
Attorney at Law

EXAMINER - W. R. Gianelli, Principal Hydraulic Engineer,
Division of Water Resources, Department of Public Works.

Assisting the Examiner - Gavin M. Craig, Senior Attorney and
J. J. Heacock, Senior Hydraulic Engineer, Division of Water
Resources, Department of Public Works.

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DECISION

Substance of the Application

The application initiates an appropriation of 0.205 cubic foot per second, year-round, from a certain spring in San Bernardino County, for domestic and recreational purposes. The spring, according to the application, is within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T2N R1 W, SBB&M, and is tributary, via Grout Creek, to Big Bear Lake. The proposed works include a concrete diverting dam, 6 feet high by 10 feet long and 1,300 lineal feet of 3-inch galvanized iron pipe to be laid on a downward grade averaging 7.7%. A domestic supply of 50 gallons per day per person is wanted for some 60 people in 15 cabins. A supply of approximately 0.2 cubic foot per second is wanted also for the operation of a swimming pool and two small trout ponds, the overflow from which will return to Grout Creek.

Protests

The application is protested by Orange County Water District individually and by Santa Ana River Development Company, Anaheim Union Water Company and Santa Ana Valley Irrigation Company, jointly.

Orange County Water District asserts in effect that its boundaries include some 170,000 acres, that said lands all lie within Santa Ana River watershed and depend upon that stream system for

their water supply, that the entire flow of Santa Ana River and its tributaries has long been appropriated, that no water within that stream system is unappropriated and that any upstream diversion such as that proposed by the applicant will create a deficiency which will be transferred downstream to District's lands. It asserts that water rights attaching to its lands include riparian and appropriative rights, also rights of overlying owners to underground water originating in Santa Ana River and/or tributaries, that under said rights the entire water supply reaching Orange County is used completely and continuously, year-round, for agricultural, domestic, municipal and industrial purposes, that when irrigation is in progress the entire surface flow is diverted directly and that at other times the flow of the river sinks or is spread so as to recharge underground storage. It declares that under no conditions may its protest be disregarded and dismissed.

Santa Ana River Development Company, Anaheim Union Water Company and Santa Ana Valley Irrigation Company assert jointly that the diversion proposed by the applicant will deprive them of water to which they are entitled and will therefore injure them and their stockholders as well as all water users in Orange County dependent upon Santa Ana River as a source of supply. They assert that there is no unappropriated water in or from the applicant's proposed source, that all water flowing in Santa Ana River and its tributaries for many years has been and now

is appropriated and in beneficial use, that the diversion proposed by the applicant would cause a deficiency in supply which would be transferred downstream to the lowermost users. They claim that since 1876 they and/or their predecessors have appropriated and put to beneficial use the entire surface and sub-surface flow of the Santa Ana River which reaches Orange County, that the waters are used continuously, year-round, for agricultural, domestic, municipal and industrial purposes. They assert that all surface flow is diverted throughout each irrigation season and that all flow not so diverted is percolated into the ground to recharge sub-surface storage. They represent that their 2,000 stockholders irrigate in excess of 20,000 acres. They represent themselves to be mutual water companies, assert riparian rights and rights of overlying owners to underlying ground waters, describe their diversion point as being located within Section 26, T3S R8W, SBB&M, state that their protest may under no conditions be disregarded.

Answers

No answers to protests against Application 15131 are of record.

Hearing Held in Accordance with the Water Code

Application 15131 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, May 15, 1956, at 10:00 o'clock a.m. in the City Council Chamber, City Hall, San Bernardino, California. Of the hearing the applicant and the protestants were duly notified.

Testimony

Witnesses testified at the hearing as follows:

Ralph O. Chick, representing the applicant, testified (pages 6 to 19 of transcript) to the effect that the applicant's project is as set forth in the application, that of the 0.205 cubic foot per second sought under the application the use of 0.2 cubic foot per second will be non-consumptive and the water returned to Grout Creek, that the only consumptive use contemplated will be domestic use by about 60 people, that the spring filed upon does not run continuously, that its ultimate yield has not been passed upon by an engineer or a geologist, that there are several springs in the small canyon (locally called Deer Creek Canyon) and he believes that by work such as bulldozing a water supply may be developed, that the proposed place of use is about 1/4 mile down-channel from the springs, that stream flow across applicant's property fails in early summer, resumes in winter, that there is a well on the applicant's property, 3 feet in diameter by 10 or 12 feet deep, the yield of which is inadequate for applicant's purposes. Witness

Chick's testimony also included statements to the effect that the spring filed upon is on the side of Deer Creek Canyon, that it is tributary via Deer Creek to Grout Creek, that the two creeks meet on the applicant's property, some 30 acres in extent, that applicant's property adjoins the Forest Reserve, that some of the springs along Deer Creek are on the applicant's land and some on Forest Reserve land.

Paul Bailey, consulting engineer, testified (pages 19 to 71 of transcript) to the effect that the applicant's proposed point of diversion is within the Santa Ana River watershed, that water emanating from the spring that is the applicant's proposed source would, if not interrupted, follow a downhill course via Santa Ana River and Canyon and mingle with the waters in use by the Orange County Water District landowners, that he has read a portion of a certain report written June 20, 1955, signed "J. J. Heacock" (later introduced in evidence as Examiner's Exhibit A), that he has heard Witness Chick's hearing testimony, that he has examined the property referred to in the application, that he finds no disagreement between Witness Chick's testimony and the Heacock report or incorrect statements in either. Witness Bailey's testimony also included statements to the effect that in his opinion the water sought to be appropriated is not water flowing in a definite channel and therefore is not subject to appropriation, that he can find no unappropriated water within the Santa Ana River watershed

since there is no outflow from the river to the ocean, that the protestant water companies own rights to the entire flow that enters the lower canyon of Santa Ana River, that the use of water proposed by the applicant is in part consumptive, that the water supply of the Bear Valley Mutual Water Company has been insufficient for many years, that in his opinion the water which the applicant seeks to appropriate is not water which is subject to appropriation as defined in Water Code Section 1200, that the protestants' diversions head 70 miles or more downstream from the applicant's proposed point of diversion, that in his opinion the cumulative effect of further appropriations such as the applicant's, from upper tributaries of Santa Ana River, no matter how small those appropriations may be individually, will be the destruction of downstream rights so that in time the full flow of the stream system will be used in upstream localities and none in Orange County.

J. J. Heacock, Senior Hydraulic Engineer, Division of Water Resources testified (pages 72 to 95 of transcript) to the effect that he made a field investigation in connection with Application 15131 on June 15, 1955, and submitted a written report thereon entitled "Report of Division of Water Resources on Application 15131", that Deer Creek is a rather sharply V-shaped valley that is tributary to Grout Creek, that the applicant's proposed point of diversion is located in a small draw or ravine on the right or southerly side of Deer Creek Canyon and possibly

100 feet distant therefrom, that the locality is very rugged, that the place where the water appears to come to the surface is a fairly well defined channel and supports a growth of willows, indicative that at times water is near the surface, although the place was not wet at time of investigation, that any flow that may occur at the place in question (applicant's proposed point of diversion) would move via Deer and Grout Creeks to Big Bear Lake. Witness Heacock's testimony also included statements to the effect that there is at the described place of use one cabin and one pool, that subsurface flow from the proposed point of diversion would probably trend toward Big Bear Lake although "the whole area is badly faulted and nobody knows where the fault line might go underground," that outflow from Big Bear Lake if not interrupted would join the Santa Ana River, flow past San Bernardino, into lower Santa Ana Canyon, that except after storms extensive reaches of Santa Ana River channel are usually dry, that it is about 20 river miles from Big Bear Lake to the gaging station at San Bernardino.

Motion and Objection

After the conclusion of testimony on behalf of applicant the protestants moved (page 24 of transcript) that the application be dismissed because of applicant's failure to show that the water sought to be appropriated is a type of water over which the Division of Water Resources has jurisdiction and because

of failure by applicant to establish that unappropriated water exists. The Examiner denied the motion (page 26 of transcript).

In the course of Witness Heacock's testimony Attorney Howell on protestants' behalf objected (page 24 of transcript) to any testimony on applicant's behalf by that witness, on the contention that the applicant is the moving party, has the duty of establishing necessary facts and is not entitled to have the Division carry the burden for him. The examiner overruled the objection (page 77 of transcript).

After completion of testimony the protestants again moved that the application be dismissed and the Examiner again denied the motion (pages 95 to 97 of transcript).

Exhibits

United States Geological Survey Water Supply Papers insofar as those documents show storage at Big Bear Lake and mean daily discharges of Santa Ana River at San Bernardino and at Santa Ana.

Document entitled "Report of Division of Water Resources on Application 15131", signed J. J. Heacock, prepared June 20, 1955.

Information from Exhibits

The United States Geological Survey Water Supply Papers indicate that the storage capacity of Big Bear Lake is 72,200 acre-feet, that it has not spilled in any year of published

record, that in water-year 1951-52, during which average discharge of Santa Ana River as measured at E Street bridge, San Bernardino, was some 173% of normal, the greatest recorded amount in storage in Big Bear Lake was 22,914 acre-feet and measurable flows passed San Bernardino and Santa Ana on but 168 days and 134 days, respectively.

The document entitled "Report of Division of Water Resources on Application 15131" contains among others the following statements:

"The data and information in this report have been obtained from the files of Application 15131 and other public records; from a discussion with the protestants' attorney and a representative of the applicant; and from observations made by a representative of the Department on June 15, 1955."

"Big Bear Lake is owned by the Big Bear Mutual Water Company and the water is used for irrigation in the Redlands area The ... Company did not protest the application, complying with an agreement In substance the agreement is that the Company will not protest small applications ... based on the fact that return water from the use will flow into the reservoir."

"The unnamed spring ... is a marshy area in a steep side ravine, thence the drainage is northerly for about 100 feet to a narrow canyon, locally called Deer Creek, thence about one-quarter mile easterly to Grout Creek, thence southerly to Big Bear Lake ... in the Santa Ana River drainage area. There was no surface flow from the spring at the time of inspection, Deer Creek, in the immediate vicinity, had sections of surface flow of three to four gallons per minute.

"The watershed above the proposed point of diversion contains about one-half square mile of steep mountain side, having a moderate covering of brush and timber."

"Flow in Deer Creek, at its confluence with Grout Creek was about 0.04 cfs and the flow of Grout Creek, above the confluence was about the same. Mr. V. D. Pederson, a long-time local resident, stated that surface flow in both streams, at that point, ceased before the first of July each year, regardless of the character of the previous season, but that there was surface water in both canyons a short distance upstream throughout the entire year."

"The place of use is within the southwesterly 30 acres of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11, property corner monuments were in so the lines could be easily seen. Deer Creek, from a point about 200 feet below the proposed point of diversion, to Grout Creek, passes through the property of the applicant, and Grout Creek is partially within the property"

Discussion

The amount of water that the applicant may be able to develop is problematical, the main evidence that water exists being a willow growth at and about the alleged spring and a natural channel leading therefrom.

Of the 0.205 cubic foot per second which the applicant seeks to appropriate the 0.200 cubic foot per second wanted for non-consumptive purposes plainly may be utilized in the manner proposed without injury to lower diverters. Of the remaining 0.005 cubic foot per second, the proposed use of which is largely consumptive a portion may be supposed to remain unconsumed and therefore available for further use downstream.

The first downstream diverter that might be affected by the applicant's proposed development is Bear Valley Mutual

Water Company, operator of Big Bear Lake as a storage reservoir. Bear Valley Mutual Water Company however has not interposed any objection to the approval of Application 15131.

Since surface drainage from the vicinity of the spring that applicant has filed upon enters Big Bear Lake and presumably subsurface drainage does also; since also the drainage entering Big Bear Lake is controlled by Bear Valley Mutual Water Company and supplied by that concern for irrigation of lands near Redlands, it is not apparent that any material portion, if any at all, of the water that the applicant seeks to appropriate can reach the lands in Orange County, some 40 miles farther downstream, in which the protestants are interested.

In view of the improbability that the applicant's proposed development will result in material injury if any injury at all to any downstream user, such water as the applicant may be able to develop and use in the manner proposed in Application 15151 may be deemed subject to appropriation.

Conclusion

The data indicate that unappropriated water exists in small amounts in the source from which the applicant seeks to appropriate and that such water may be taken and used beneficially in the manner proposed in the application without materially decreasing the supply available to downstream users including the protestants, if decreasing that supply at all. It

is the opinion of this office therefore that the protests against Application 15131 are insufficient to bar the approval of that application which should therefore be approved and permit issued, subject to the usual terms and conditions.

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ORDER

Application 15131 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 15131 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 July 1956

HARVEY O. BANKS, STATE ENGINEER

By _____

L. C. Jopson
Assistant State Engineer