

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 17053) Source: San Jose Creek
by Ernest Haeckel) County: Santa Barbara

Decision No. D 912

Decided: September 25, 1958

In attendance at the investigation conducted by the staff
of the State Water Rights Board on February 25, 1958:

Ernest Haeckel	Applicant
Jack A. Otero	Attorney for Protestant Michael Kantzler, et ux.
Stuart Gregory	Ranch Manager for Protestant Kantzler
Fred Acres	Former owner Kantzler Ranch
R. R. Forsberg, Assistant Hydraulic Engineer	Representing the State Water Rights Board

DECISION

Substance of the Application

The application seeks a permit to appropriate 0.08 cubic foot per second (cfs), year-round, from San Jose Creek tributary to the Pacific Ocean for domestic, recreational and fish cultural purposes. Water is to be diverted at either of two points within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ or NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 22, T5N, R28W, SBB&M, by means of concrete diversion dams 2 to 5 feet high by 10 feet long

and conveyed through 1400 feet of pipeline to the place of use within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 22.

The proposed appropriation is primarily for domestic purposes at seven residences, a school dormitory and the irrigation of lawns and gardens in connection therewith. Water is also to be used in a fish pond, swimming pool and wading pools.

Protest and Answer

A protest against the approval of Application 17053 was submitted by Amelia Acres, Executrix of the Estate of Teresa Scudelari, based on use begun prior to December 19, 1914, riparian rights and prescriptive rights. The protestant claims that injury will result because the proposed appropriation will reduce the supply of water available. According to the protest, the protestant diverts water at a point within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 27, T5N, R28W, SBB&M, year-round, for irrigation purposes. Subsequent to the filing of the protest, the property involved was transferred to Michael Kantzler, et ux.

No formal written answer to the protest is of record.

Field Investigation

The applicant and protestants, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of hearing as provided for under Section 737 of the Board's rules and a field investigation was conducted on February 25, 1958, by R. R. Forsberg, an engineer of the Board. The applicant and protestants were represented at the investigation.

Records Relied Upon

The records relied upon in support of this decision are Applications 12684, 13554 and 17053 and all relevant information on file therewith, with particular reference to Decision No. D 704 of the former State Engineer and to the Report of Field Investigation in connection with Application 17053; United States Geological Survey, "Goleta" quadrangle, 7½ minute series; United States Department of the Interior, Geological Survey, Water Supply Papers, Part 11, "Pacific Slope Basins in California".

Description of the Watershed

San Jose Creek rises in Section 15, T5N, R28W, SBB&M, on the southern slopes of the Santa Ynez Mountains and flows in a southerly direction approximately 7 miles to the Pacific Ocean. Several unnamed streams or canyons are tributary to San Jose Creek from the west. The terrain in the upper reaches of the watershed has a moderate to heavy covering of brush and trees and is steep and rugged. Below the United States Geological Survey gaging station, "San Jose Creek near Goleta", at about mile 3.6 from the ocean, the watershed levels out and the area is highly developed agriculturally; the principal crops being lemons and avocados.

San Jose Creek drains an area of approximately eight square miles, of which 2.25 square miles are contributory above the applicant's lowermost point of diversion, and 3.25 square miles are contributory above the protestants' point of diversion. The protestants' point of diversion is located about 5.2 miles and the applicant's points of diversion are located at about 6.3 and 6.45 miles above the mouth of the creek.

Water Supply

The United States Geological Survey, in its Water Supply Papers, has published the mean daily discharge of San Jose Creek at a point near Goleta for the period 1941-42 to 1953-54. The mean monthly flows in cubic feet per second as measured by the United States Geological Survey are tabulated in Table 1. There are intervening tributaries and diversions below the applicant's and protestants' points of diversion, but there are no records of the amounts of these accretions or decrections, except at the time of the investigation a tributary entering San Jose Creek about 3/4 mile below the protestants' point of diversion was flowing an estimated 2 cfs. This could not be taken as representative flow because of the rains of the previous day.

TABLE 1

MEAN DAILY FLOW
IN SAN JOSE CREEK NEAR GOLETA

Cubic Feet Per Second

Month	Season												Mean	Median	
	41-42	42-43	43-44	44-45	45-46	46-47	47-48	48-49	49-50	50-51	51-52	52-53			53-54
Oct.	0.38	0.19	0.21	0.18	0.04	0	0	0	0.001	0.003	0	0.32	0.02	0.103	0.02
Nov.	0.45	0.32	0.21	3.73	0.17	5.11	0	0	0.190	0.08	0	1.24	0.40	0.916	0.21
Dec.	3.72	0.37	1.00	0.48	3.51	3.60	0	0.207	0.690	0.15	1.60	3.95	0.35	1.510	1.00
Jan.	1.37	29.40	0.41	0.51	0.19	0.138	0	0.152	0.880	0.26	35.6	2.50	2.38	5.676	0.51
Feb.	0.53	6.50	9.04	7.35	0.47	0.076	0.020	0.086	2.06	0.18	1.07	0.35	1.37	2.240	0.53
Mar.	0.69	9.05	5.18	1.79	2.84	0.37	0.300	2.82	0.410	0.19	15.0	0.51	1.58	3.133	1.58
Apr.	4.14	1.64	0.78	0.70	0.65	0.17	0.187	0.119	0.270	0.07	2.46	0.51	0.78	0.960	0.65
May	0.78	0.74	0.66	0.41	0.39	0.13	0.13	1.06	0.061	0.13	0.92	0.42	0.59	0.484	0.42
June	0.23	0.25	0.277	0.08	0	0.005	0	0.097	0.025	0	0.37	0.20	0.07	0.123	0.08
July	0.15	0.24	0.118	0.102	0	0	0	0	0.007	0	0.15	0.02	0.02	0.062	0.02
Aug.	0.06	0.096	0.089	0.006	0	0	0	0	0	0	0.42	0.05	0.89	0.124	0.006
Sept.	0.16	0.117	0.083	0.015	0	0	0	0	0	0	0.29	0.10	1.40	0.167	0.015

Use by Protestant

According to the aforementioned report of field investigation the protestants' diversion works consist of an 8-inch pipe at the intake which is reduced in several stages to a 3-inch pipe. The pipeline parallels the creek for about one-half mile to develop sufficient pressure head. A pump is also installed during the irrigation season at the point where the pipeline leaves the creek bank to intercept any water that by-passes the upstream intake to the gravity diversion. This pump discharges into the protestants' distribution system. The protestants also divert water through a 2-inch pipeline from an unnamed stream tributary to San Jose Creek for domestic purposes. The unnamed stream enters San Jose Creek about three-quarters mile below the protestants' point of gravity diversion. Water is used by the protestants to irrigate 40 acres of lemons and for domestic purposes at two residences.

Other Filings of Record on San Jose Creek

Permit 8613 (Application 12684) held by the applicant, permits a diversion of 666 gallons per day, year-round, for domestic purposes and the irrigation of 2.5 acres within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 22, T5N, R28W, SBB&M. The water is diverted at a point within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 22 (one of the points of diversion under Application 17053).

Application 17869 (pending) in the name of Mariano P. and Mary R. Romero seeks a permit to appropriate 0.029 cubic foot per second year-round, for domestic use within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 27, T5N, R28W, SBB&M. Water is to be diverted at a point within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 27.

License 2670 (Application 9718) held by William Zimdin Estate and Foundation confirms a right to divert 150 acre-feet per annum by storage between December 1 and May 1 of each season. Water is diverted at a point within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 3, T4N, R28W, SBB&M, and conveyed to an off-stream reservoir located in the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 33, T5N, R28W, SBB&M. The water is used to irrigate 157 acres within Section 4, T4N, R28W, SBB&M, and Section 33, T5N, R28W, SBB&M.

Decision No. D 704

Decision No. D 704, issued May 28, 1951, by the former State Engineer on the basis of the record of flow of San Jose Creek at Goleta from 1941-42 to 1948-49 approved Application 12684 of Mr. Haeckel to appropriate 666 gallons per day, year-round, in view of the small amount involved and, "the evident existence of surpluses in most months of all years and in every month of some years". However, Application 13554 of the same applicant to appropriate 10,000 gallons per day from San Jose Creek between June 2 and October 31 was denied, "in view of the probability of material interference with Protestant Sexton's (a downstream water user) diversion of surface flow, and the limited supply that the figures indicate might be available to the applicant and the irregularity of that supply,..."

Discussion

According to the aforementioned report of field investigation made by the Board's engineer on February 25, 1958, the former owner of the protestants' ranch stated that all of the available

flow of the creek has been used on that ranch during the summer in most years. Several other diverters along the creek (Joe Sexton, Joe L. Gavaletto and Michael Bosio) indicated that normally after July 1 there is either an insufficient or no flow of water through their properties until the fall rains begin. All of the users listed divert from San Jose Creek at points between protestants Kantzler and the United States Geological Survey gage and claim either riparian rights or appropriative rights initiated prior to December 19, 1914.

Inasmuch as the USGS gage (San Jose Creek near Goleta) is located below the applicant, the protestants and other principal diverters, the flow passing that point may be assumed as the measure of the flow from the watershed which wastes to the ocean. This would not necessarily be a measure of unappropriated water at the applicant's proposed points of diversion because of possible accretions from intervening tributaries. It would, however, indicate the maximum amount that would be available to the applicant. The record of flow as set forth in Table 1 indicates that water in the amount requested by the applicant (0.08 cfs) was not available in the following months during the period of record:

<u>Month</u>	<u>% of Time Water Not Available*</u>
June	46
July	62
August	69
September	54
October	62

* Based on the 13-year period of record in Table 1.

As can be seen from the above tabulation and from Table 1, water in the amount requested by Application 17053 was not available over 50% of the time from July through October. It was also not available during June of six of the 13 years of record and during August, the month of greatest shortage, water to the extent of 0.08 cfs was not available during nine of the 13 years. Table 1 also shows that during certain years the amount requested was not available in all the other months except March.

During the period of November through May of the succeeding year there is apparently unappropriated water passing the applicant's proposed points of diversion. Such flows of unappropriated water, however, are limited and variable in amount, being affected both by weather and by downstream requirements.

Conclusions

The information indicates and the Board finds that unappropriated water ordinarily exists from about November 1 of each year until about May 31 of the next at the applicant's proposed points of diversion, that it seldom exists at other times, that during the periods when it ordinarily exists it may be taken and used beneficially in the manner proposed by the applicant without injury to downstream diverters. In view of all available information it is the conclusion of the Board that Application 17053 should be approved in part and a permit issued to the applicant allowing diversion from about November 1 of each year to about May 31 of the succeeding year.

ORDER

Application 17053 for a permit to appropriate unappropriated water having been filed, a protest having been submitted, an investigation having been held by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 17053, insofar as it relates to diversions from about November 1 of each year to about May 31 of the succeeding year be, and the same is hereby approved, and that a permit be issued to the applicant subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.08 cubic foot per second, which amount may be diverted from about November 1 of each year to about May 31 of the succeeding year.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before June 1, 1959, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1960.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1961.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

IT IS FURTHER ORDERED that Application 17053 insofar as it relates to diversions from about June 1 to about October 31 of each year be and the same is hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Fresno, California, on this 25th day of September, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill, Member