STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Applications 17900 and 17970 of Santa Barbara County Water Agency to Appropriate from Tecolote Tunnel in Santa Barbara County	Decision No. D 986 ADOPTED NOV 22 '60

986

DECISION DENYING APPLICATIONS

Application 17900 was filed on December 2, 1957, by the Santa Barbara County Water Agency for a permit to appropriate 28 cubic feet of water per second for irrigation and stockwatering purposes from Tecolote Tunnel in Santa Barbara County. Application 17970, filed two months later, was similar to the earlier application but requested authority to use the water for municipal and industrial purposes. The named point of diversion is just outside the southern or outlet end of Tecolote Tunnel.

Notice of the pendency of subject applications having been duly published and a protest having been received, a hearing was held on May 12, 1960, at Santa Barbara, California, Chairman Kent Silverthorne presiding. The applicant, protestant and other interested parties were duly notified of the hearing. The hearing notice dated April 13, 1960, invited particular attention to certain specified issues. The first such issue was:

> "1. Jurisdiction of the State Water Rights Board on the source of the water involved."

The jurisdictional issue is of importance because the Board's jurisdiction to authorize the appropriation of unappropriated water does not extend to percolating ground water. This issue will be considered at more length in connection with the availability of unappropriated water after a brief description of the Cachuma Project and Tecolote Tunnel itself.

In the 1940's the Bureau of Reclamation of the United States Department of the Interior completed plans and received its first appropriation from Congress to start construction work on the Cachuma Project. The Cachuma Project works are located in the Santa Ynez River Basin and the portion of the south coastal area which lies within the southern half of Santa Barbara County. The south coastal area included in the project is a narrow coastal strip about 25 miles long and two to five miles wide, lying between the Santa Ynez Mountains and the Pacific Ocean. In this area are the City of Santa Barbara and the suburban and agricultural lands of the Goleta, Summerland, Montecito and Carpinteria County Water Districts. All are receiving water from the Cachuma Project (Bureau of Reclamation pamphlet, "Cachuma Project," R.T. 43).

The principal features of the Cachuma Project are the Cachuma Dam on the Santa Ynez River, Tecolote Tunnel to convey water from the Cachuma Reservoir in the Santa Ynez Valley to the coastal area and the South Coast Conduit to deliver water to the several county water districts and the City of Santa Barbara.

Applicant Santa Barbara County Water Agency is the political unit which by contract with the Bureau of Reclamation takes delivery of Cachuma Project water as it enters Tecolote Tunnel and delivers the water to the city and the several county water districts.

Tecolote Tunnel, 7 feet in diameter and 6.4 miles long, proved to be one of the most difficult tunnel construction jobs ever undertaken. Inflows of subterranean water reached 9,000 gallons per minute and efforts to seal off such flows were hampered by disintegrating rock formations and water temperatures up to 117° F.

Applicant's Exhibit 3, entitled, "Tecolote Tunnel, Geologic and Weep Hole Data," was prepared with the use of data collected by the

Bureau of Reclamation as construction work progressed. It shows construction progress by months, geologic formations encountered, flows of water at the outlet and inlet portals correlated to the progress in construction, weep holes put in the tunnel's concrete lining, and temperature of water.

Construction work began on the northerly or inlet portal in March of 1950 and the three-mile upper portion of the tunnel was completed in March of 1952. Inflow of water into this section of the tunnel was less than one cubic foot per second at the time of completion in 1952. This water was pumped back through the inlet tunnel against an adverse grade of a little over one foot to the mile.

In May of 1950, construction work began at the outlet or southerly portal of Tecolote Tunnel. This work progressed for about 3,200 feet before water was encountered in measurable quantities (R.T. 41). As the midpoint of the tunnel was approached, the flows progressively built up until a maximum flow of 9,000 gallons per minute was reached in August of 1954. At the time that the tunnel was holed through in January of 1955, the rate of flow at the outlet portal had dropped to about 6,400 gallons per minute, or a little less than 15 cubic feet per second. The rate of flow had further dropped to about 5.6 cubic feet per second by April, 1960.

The headworks of the South Coast Conduit are located near the outlet of Tecolote Tunnel on the coastal side of the Santa Ynez Range. Concrete pipe and structures connect the tunnel and the headworks so that all water emerging from the tunnel can be made subject to project operations.

Applications 17900 and 17970 give the source of the water sought to be appropriated as "Tecolote Tunnel, drilled by the Bureau of Reclamation in connection with Cachuma Project." Accordingly, these applications are limited to the water developed in the tunnel which adds itself to the

Cachuma Project water. Because the Board's jurisdiction over ground water is limited by the Water Code, the applicant was requested to brief the question of jurisdiction. The brief states in part:

> "It is the position of the applicant Santa Barbara County Water Agency that the water developed in Tecolote Tunnel at the point of diversion as set forth in the applications, to wit: outside of the tunnel itself is surface water within the meaning of Section 1200 of the Water Code, and being water, outside of the south portal of the tunnel which is not being applied to useful and beneficial purposes upon, and is not reasonable needed for such purposes upon lands riparian thereto, and is not otherwise appropriated, is subject to appropriation in accordance with the provisions of the Water Code as set forth in Section 1201 thereof.
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> "Because of the gradient of Tecolote Tunnel the water developed therein flows to the south and unless diverted, intercepted, or otherwise put to beneficial use, would normally flow into Glen Anne Creek and eventually would waste into the Pacific Ocean."

If the water developed by Tecolote Tunnel came from a subterranean stream "flowing through known and definite channels" within the meaning of Section 1200 of the Water Code, the water would be unappropriated and subject to the Board's jurisdiction since no permit has been issued with respect thereto. The applicants, however, made no contention and offered no evidence that the water developed by Tecolote Tunnel comes from an underground stream, such as a definite fault zone with defined walls. There is a presumption that the ground water is percolating. Hutchins, California Law of Water Rights, p. 421. Accordingly, the Board finds that the water which is intercepted by Tecolote Tunnel is percolating ground water at the point of interception. There remains for consideration the questions whether the percolating ground water developed within Tecolote Tunnel becomes surface water subject to the jurisdiction of the Board as it emerges from the tunnel and whether it is unappropriated and available for appropriation at the point of diversion named in the applications.

When a tunnel develops percolating water that emerges from the tunnel as a stream, the status of the water and its possible availability as unappropriated surface water are dependent to a large extent on actions of the operator of the tunnel. If the stream of developed percolating water emerging from the tunnel is permanently or temporarily abandoned, then and thereby it becomes unappropriated and subject to the jurisdiction of the Board to the same extent as other surface water similarly situated. See De Wolfskill v. Smith, 5 Cal. App. 175, 89 Pac. 1001 (1907), which related to the appropriation of water under the Civil Code, prior to enactment of the Water Commission Act. But where the percolating water developed in a tunnel is not abandoned, but is directly taken and applied to beneficial use by the person who developed it, the tunnel water is no more subject to the jurisdiction of the Board than is any other percolating water.

Percolating water developed by and flowing from a tunnel is comparable to percolating ground water pumped to the surface of the ground from a well and awaiting beneficial use, since the only distinction between such a well and the tunnel in question is that the gradient of the tunnel permits the percolating water developed therein to reach the surface outside the tunnel by gravity without the necessity of being pumped. A person installing a well and bringing in percolating water may find that at times some of the water pumped to the surface is not used by him but flows into other water in a surface stream. For as long as this condition continues, the pumped ground water would be as much subject to the jurisdiction of the Board as the other surface water with which such water had commingled. But once the operator of the pump eliminated seepage and wastage of the pumped percolating water, it would remain pumped percolating water while being used by him and would no longer become surface water subject to the Board's jurisdiction.

While Tecolote Tunnel was being drilled there was a period of several months when the outflow was not used by the Bureau of Reclamation but was allowed to flow by gravity towards Glen Anne Creek and the Pacific Ocean. If this condition had been allowed to continue, the Board would be faced with a factual situation comparable to the De Wolfskill case and would exercise comparable jurisdiction. But the condition did not continue and does not today exist. Temporary contracts for the use of the developed water were first entered into by the Bureau in 1952 at a time when water in the south coastal area was in very short supply. Since that date substantially all water developed in Tecolote Tunnel has been used (R.T. 70-71, Staff Exh. 1). This was four years prior to completion of the tunnel. Today water developed in Tecolote Tunnel is completely commingled with water from Cachuma Reservoir, and the entire product is subject to project operation. Accordingly, the evidence indicates and the Board finds that the water developed by and within Tecolote Tunnel is appropriated by the applicant as operator of the tunnel while the water is still percolating water, and that there is no unappropriated water subject to the jurisdiction of the Board available for the applicant. Since an appropriate order will be made denying subject applications, there is no need to consider the protest of Bryant E. Myers.

The applicant stated that the granting or denying of subject applications would have no effect on its operations and that the purpose of filing subject applications was to make sure that no outsiders received a permit with respect to water developed in Tecolote Tunnel.

ORDER

IT IS HEREBY ORDERED that Applications 17900 and 17970 of Santa Barbara County Water Agency to appropriate unappropriated water

from Tecolote Tunnel in Santa Barbara County be, and the same are, denied for lack of availability of unappropriated water subject to the jurisdiction of the Board.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the _____day of_____, 1960.

Kent Silverthorne, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member