

BEFORE THE DIVISION OF WATER RIGHTS

DEPARTMENT OF PUBLIC WORKS

STATE OF CALIFORNIA

IN THE MATTER OF APPLICATION 2922 OF COACHELLA VALLEY
COUNTY WATER DISTRICT FOR A PERMIT TO APPROPRIATE
UNAPPROPRIATED WATER FROM WHITWATER RIVER, FALLS
CREEK, SNOW CREEK, TAHQUITZ CREEK, ANDREAS CAN-
YON, MURRAY CANYON AND PALM CANYON, IN RIVER-
SIDE COUNTY, CALIFORNIA, FOR AGRICULTURAL
AND DOMESTIC PURPOSES.

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DECISION NO. A 2922, D 191

Decided April 19, 1928

APPEARANCES AT HEARING HELD MARCH 16, 17, 18, 1928:

For Applicant:

H. L. Carnahan, Attorney at Law, Los Angeles, California.
J. M. Stevens, Attorney at Law, Los Angeles, California.
Thomas C. Yager, Attorney at Law, Indio, California.

For Protestants:

U. S. Indian Service; C. L. Ellis, Superintendent,
Riverside, California.
Frank W. DeLong; No appearance.

For Contestants:

Cabazon Water Company)	
Banning Water Company)	
Banning Heights Mutual Water Company)	Howard Surr, Attorney
San Geronimo Power Company)	at Law, San Bernardino,
		California.

Nellie M. Coffman, et al.)	W. G. Irving, Attorney at Law,
Prescott T. Stevens)	Riverside, California.
Palm Valley Water Company)	C. L. McFarland, Attorney at Law,
		Riverside, California.

EXAMINER: Edward Hyatt, Jr., Chief of Division of Water Rights

IN ATTENDANCE: Gordon Zander, Associate Hydraulic Engineer,
Division of Water Rights.
Spencer Burroughs, Attorney
Division of Water Rights.

O P I N I O N

On July 8, 1922, the Coachella Valley County Water District filed Application 2922 for a permit to appropriate unappropriated waters of Whitewater River, San Geronimo River, Hathaway Creek, Potrero Creek, Millard Canyon Creek, Deep Canyon Creek (San Jacinto Quadrangle), Lion Canyon Creek, Stubby Canyon Creek, Cottonwood Canyon Creek, Cabazon Creek, Snow Creek, Falls Creek, Blaisdell Canyon Creek, Chino Canyon Creek, Tahchevah Creek, Tahquits Creek, Andreas Canyon Creek, Murray Canyon Creek, West Fork, Palm Canyon Creek, Deep Canyon Creek (Indio Quadrangle), Mission Creek, Dry Morongo Creek, Big Morongo Creek, and Little Morongo Creek, all in Riverside County, the quantities of water sought to be appropriated from the various sources aggregating 94500 acre feet per annum, to be diverted during the period between January first and December thirty-first of each year. The application specifies spreading works to be constructed in the natural channels of each of the sources, by means of which the waters sought to be appropriated would be sunk into the ground water basin underlying Coachella Valley, to be withdrawn by means of wells, pumping plants, etc., of the individual land owners in the valley, for domestic use and for the irrigation of 100,000 acres of land within the boundaries of the Coachella Valley County Water District.

The application was duly advertised, and protests against the same were filed by the United States Indian Service and by Frank W. DeLong. The applicant also filed a "proof of appropriation" in the Whitewater River Adjudication

Proceedings covering the rights claimed by virtue of the pending application, and "notices of contest" against such "proof of appropriation" were filed by the Cabazon Water Company, the Banning Water Company, the Banning Heights Mutual Water Company, the San Geronimo Power Company, Nellie H. Coffman, et al., Prescott T. Stevens, and the Palm Valley Water Company.

A joint public hearing on the protests against the application and on the contests against the "proof of appropriation" was accordingly set to commence at 10:00 o'clock on the morning of March 16, 1926, in the City Hall at Riverside, California, of which hearing the applicant and claimant, and all protestants and contestants, were duly notified. The hearing was held at the time and place specified, Chief of Division Edward Hyatt, Jr., presiding. Attorney Spencer Burroughs and Associate Hydraulic Engineer Gordon Zander also attended the hearing as representatives of the Division of Water Rights. The hearing was held in conjunction with a series of hearings covering all contested matters in the Whitewater River Adjudication Proceedings, most of which matters were more or less inter-related, and the series of hearings extended over the three-day period of March 16, 17, and 18, 1926.

The applicant and claimant was represented at the hearing by H. L. Carnahan and J. M. Stevens, Attorneys at Law of Los Angeles, and by Thomas C. Yager, Attorney at Law of Indio.

Protestant United States Indian Service was represented by Superintendent C. L. Ellis of Riverside. Protestant Frank W. DeLong entered no appearance at the hearing.

Contestants Cabazon Water Company, Banning Water Company, Banning Heights Mutual Water Company, and San Geronimo Power Company were represented by Howard Surr, Attorney at Law of San Bernardino. Contestants Nellie H. Coffman, et al., and Prescott T. Stevens were represented by W. C. Irving, Attorney

at Law of Riverside, and contestant Palm Valley Water Company was represented by C. L. McFarland, Attorney at Law of Riverside.

In addition to the record protestants and contestants, Frank Thunen, Attorney at Law of San Francisco, entered an appearance on behalf of the Southern Pacific Company, the Southern Pacific Railroad Company, and the Southern Pacific Land Company, and called attention to the fact that the hearing was being held in advance of the expiration of the sixty-day period allowed for filing protests as specified in the notices of the application which were sent out by the Division of Water Rights under date of February 6, 1926. The Examiner explained that the hearing on the application was being held at that time, concurrently with hearings on all other matters within the Whitewater River watershed which were then pending before the Division of Water Rights, purely as a matter of expediency, but that if additional protests were received subsequent to the hearing but prior to the expiration of the period allowed for filing protests, it would be necessary to hold a further hearing on the application. Mr. Thunen then stated that he had no objection to the hearing on the application being held at that time, provided his clients were not foreclosed of their rights to protest within the period allowed for filing protests if it should later appear that the protection of their interests required the filing of protests. The hearing proceeded with that understanding, and as no protests whatever have been received against the application subsequent to the hearing it is assumed that the interests of the companies that Mr. Thunen represents would in no way be prejudiced by the consummation of the project contemplated by the applicant.

At the opening of the hearing the attorneys for the applicant requested permission to amend the application so as to exclude all proposed sources of appropriation except the Whitewater River and six of its main trib-

utaries, and so as to reduce the total amount of water applied for from 94,500 acre feet per annum to 48,000 acre feet per annum. The amendments proposed were allowed by the Examiner and the hearing then proceeded upon the basis of the amended application, covering the following sources and quantities of water:

<u>Source</u>	<u>Quantity of Water</u> <u>Acre Feet per Annum</u>
Whitewater River	29,000
Snow Creek	8,000
Falls Creek	2,000
Tahquits Creek	5,000
Andreas Canyon Creek	1,000
Murray Canyon Creek	1,000
Palm Canyon Creek	2,000
Total - - - - -	<u>48,000</u>

Protest of United States Indian Service

There are six Indian Reservations situated within the "Whitewater River watershed.

The Morongo Indian Reservation comprises some forty-three sections of land adjoining the town of Banning and extending to the east and north. According to the survey made by the Division of Water Rights in 1923 there are 15.1 acres of land within the reservation which are irrigated with water diverted from Hathaway Creek, and 596.5 acres of land within the reservation which are irrigated with water diverted from Potrero Creek. In addition to the areas actually under irrigation, it is estimated in the "Suggestion of the United States" filed in the Whitewater River Adjudication Proceedings (Folder VI-22) that there are more than 185 acres of land in the reservation which are irrigable from Hathaway Creek and more than 604 acres which are irrigable from Potrero Creek, making a total of more than 1400 acres of land within the reservation for which water is claimed. According to the above mentioned "Suggestion" continuous flows of three cubic feet per second from Hathaway Creek and seven cubic feet per second from Potrero

Creek are claimed by the United States Indian Service for the reservation. Observations made by the Division of Water Rights in connection with the Whitewater River Adjudication Proceedings indicate that the full amounts of water claimed are seldom available in either Hathaway or Potrero Creeks, and that it is the practice of the Indian Service to divert and use the entire flows of those streams, except in times of extreme floods.

As Application 2922 has been amended, all proposed points of diversion above the mouth of Snow Creek have been eliminated, and the uppermost proposed point of diversion is now situated about three miles east of, and below, the extreme eastern boundary of the Morongo Indian Reservation and below both Hathaway and Potrero Creeks. It is therefore apparent that the diversion of water as contemplated by the applicant could in no way physically interfere with the protestant in the exercise of the rights which it claims for the Morongo Indian Reservation, and as any rights which the applicant might acquire would be subject to the existing rights of the protestant, the rights of the latter could in no way be legally prejudiced by the granting of a permit to the applicant.

The Mission Creek Indian Reservation comprises four sections of land situated about six miles due north of Whitewater Station. Mission Creek traverses the reservation, and the United States Indian Service has constructed a cement pipe diversion and distribution system by means of which about 165 acres of irrigable land within the reservation can be served with water from Mission Creek. Altho no water was used thru this system in 1925, a continuous flow of three cubic feet per second is claimed from Mission Creek for the reservation, according to the above mentioned "Suggestion". Altho records of only two current meter measurements of the flow of Mission Creek are available, these indicate that the bulk of the normal flow of Mission Creek will be required to fulfill the claim of the Indian Service.

As originally filed, Application 2922 contemplated a diversion from Mission Creek on land within the Indian Reservation. As amended, however, Mission Creek has been entirely eliminated as a source of appropriation, and consequently there no longer remains any conflict between the proposed development of the applicant and the claims of the protestant for the Mission Creek Indian Reservation.

The Agua Caliente Indian Reservation comprises some forty-eight sections of land surrounding the town of Palm Springs. According to the survey made by the Division of Water Rights in 1925 there are 48.3 acres of land within the reservation which are irrigated with water diverted from Tahquits Creek, and 35.5 acres of land within the reservation which are irrigated with water diverted from Andreas Creek. In addition to the areas actually irrigated, it is estimated in the above mentioned "Suggestion" that there are more than 276 acres that are irrigable from the two sources, making a total of more than 360 acres of land within the reservation for which water is claimed. According to the "Suggestion" continuous flows of four and eight-tenths cubic feet per second and six cubic feet per second are claimed from Tahquits and Andreas Creeks, respectively, for the reservation. Data contained in the "Report on Water Supply and Use of Water from Whitewater River Stream System" by Gordon Zander, on file in the Whitewater Adjudication Proceedings, indicate that at times during the winter and spring months the flows of both Tahquits and Andreas Creeks exceed the respective amounts of water claimed from these sources, and it is such surplus flows that the applicant seeks to spread and store underground. The extent of unappropriated water in Tahquits Creek is analysed hereinafter under the subheading "Content of Nellie H. Coffman, et al."

According to the amended application, the proposed points of diversion on both Tahquits and Andreas Creeks are situated below the respective points of

diversion of the protestant's irrigation system for the Agua Caliente Indian Reservation. It is therefore apparent that the diversion of water as contemplated by the applicant could in no way physically interfere with the protestant in the exercise of the rights which it claims, and as any rights which the applicant might acquire would be subject to the existing rights of the protestant, the rights of the latter could in no way be legally prejudiced by the granting of a permit to the applicant.

The Cabazon Indian Reservation comprises about two and one-half sections of land situated immediately north of the town of Coachella, the Augustine Indian Reservation comprises one section of land immediately south of Coachella, and the Torres Indian Reservation comprises some twenty sections of land at the extreme lower end of Coachella Valley, adjacent to Salton Sea. The field investigation made by the Division of Water Rights in connection with the Whitewater River Adjudication Proceedings indicates that while there are no perennial surface streams traversing these reservations, or available for diversion onto the same, there are about 510 acres of land within the reservations that are irrigated with water derived from the underground basin underlying Coachella Valley, by means of wells, pumps, etc. In addition to the areas actually irrigated it is claimed in the "Suggestion" that the reservations contain "very large areas of irrigable lands" the only source of water supply for which is the ground water underlying Coachella Valley.

In the protest received from the United States Indian Service on August 9, 1922, it is contended "that further diversions from tributaries of the Coachella Valley underground storage basin will deplete the water supply therein to the great detriment of the artesian wells located in the vicinity of Coachella where the Indians have 47 wells." It is added in the protest, however, that "Should it develop that the filings are for the purpose of allowing the water to

percolate directly into the Coachella underground basin without intermediate use for irrigation with the resulting loss through evaporation, this protest will become void." From the data contained in the application and the information developed at the hearing it is clear that the purpose of application is to initiate a right to increase the quantity of water which naturally percolates into the underground basin underlying Coachella Valley, by artificial spreading, and that no intermediate use for irrigation is contemplated. Accordingly it is apparent that the effect of the consummation of the project covered by the application will be to increase the water supply available for the Cabazon, Augustine and Torres Indian Reservations rather than to deplete the same, and as authorized in the protest the objections raised by the protestant based upon its water rights for the three lower Indian reservations will be disregarded.

In conclusion with respect to the protest of the United States Indian Service, the Division of Water Rights is of the opinion that the appropriation of water as contemplated under the application can in no way physically interfere with the protestant in the exercise of the rights which it claims to surface flow diversions for the Morongo, Mission Creek and Agua Caliente Reservations, and that insofar as the Cabazon, Augustine and Torres Reservations are concerned, the water supply available for use thereon will be increased rather than depleted by the contemplated appropriation. The Division of Water Rights is of the further opinion that the granting of a permit on the application "subject to vested rights," can in no way legally prejudice the water rights claimed by the protestant.

Protest of Frank W. DeLong

This protestant owns a ranch riparian to Mission Creek immediately below, and adjoining, the Mission Creek Indian Reservation. According to the survey made by the Division of Water Rights in 1925, there are 17.9 acres of land on the pre-

testants ranch that are irrigated with water diverted from Mission Creek and its tributaries.

As Application 2922 was originally filed, it specified a proposed point of diversion on Mission Creek situated about two miles above the protestant's uppermost intake. As amended at the hearing, however, Mission Creek has been entirely eliminated as a source of appropriation, and consequently there no longer remains any conflict between the proposed development of the applicant and water rights claimed by the protestant.

Protestant DeLong did not appear at the hearing, nor did he attempt to show good cause for his failure to appear as provided for in Section 1a of the Water Commission Act, and his default in this matter is interpreted as indicating his intention of withdrawing his protest in consideration of the amendments which were made to the application.

Contest of Cabazon Water Company

This contestant diverts water from Millard Creek for the irrigation of 409.4 acres of land surrounding the town of Cabazon, as indicated by the 1923 survey above referred to. As originally filed, Application 2922 specified a proposed point of diversion from Millard Creek situated about three miles below the intake of the contestant. As amended at the hearing, however, Millard Creek has been entirely eliminated as a source of appropriation, and consequently there no longer remains any conflict between the proposed development of the applicant and the water rights claimed by contestant.

Subsequent to the amendment of the application at the hearing, the contest of the Cabazon Water Company was withdrawn (See Transcript, page 20, lines 4 to 20; also stipulation between applicant and protestant on pages 234 and 235 of Transcript).

Contests of Banning Water Company, Banning Heights Mutual Water Company
and San Geronio Company.

These three contestants jointly maintain a system by means of which water is diverted from the South Fork of Whitewater River into the San Geronio River watershed, from which it is rediverted, together with the natural run-off of San Geronio River and its tributaries, and used for power, domestic and stock watering purposes, and for the irrigation of 2715.3 acres of land served by the Banning Water Company and 562.8 acres of land served by the Banning Heights Mutual Water Company, such irrigated areas being indicated by the 1923 survey.

As originally filed, Application 2922 specified a proposed point of diversion on San Geronio River situated above the contestants three lowest re-diversion intakes. As amended, however, San Geronio River has been entirely eliminated as a source of appropriation, and there no longer remains any conflict between the development proposed by the applicant and water rights claimed by the contestants.

Subsequent to the amendment of the application at the hearing, the contests of the Banning Water Company, the Banning Heights Mutual Water Company and the San Geronio Power Company were withdrawn (see Transcript, page 23, lines 9 to 29; also stipulation between applicant and contestants filed as Coachella Valley County Water District Exhibit 1 in Folder VII - 7, Pocket 2, of the Whitewater River Adjudication files)

Contest of Nellie H. Coffman, et al.,

These contestants divert water from Tahquitz Creek, through the same system which supplies the Agua Caliente Indian Reservation, for the irrigation of 48.75 acres of land in the vicinity of Palm Springs. They have contested the claim filed by the applicant in the Whitewater River Adjudication Proceedings based upon its Application 2922, insofar as said Application covers a proposed appre-

priation of 5,000 acre feet per annum of the waters of Tahquitz Creek.

The contest is based upon two grounds, as follows:

(1) That the applicant has no legal right or authority to appropriate or divert any water whatsoever from Tahquitz Creek as a County Water District, where such water is to be stored underground and to be thereafter diverted from said underground storage by means of the pumping plants of the individual land holders within the boundaries of the District.

(2) That there is no unappropriated water in Tahquitz Creek.

The first, or legal basis of contest was also advanced by contestants Prescott T. Stevens and the Palm Valley Water Company in their joint contest, and this point was argued in briefs submitted by Attorney Carnahan on behalf of the applicant and Attorney Irving on behalf of the contestants (see "Brief of Contestants P. T. Stevens, Palm Valley Water Company, Nellie N. Coffman, et al.*****", Appellants Opening Brief in L. A. No. 8676 in the Supreme Court of the State of California, and Brief for Respondent in L. A. No. 8676 in the Supreme Court of the State of California, all on file in Folder VII-7, Pocket 7, of the Whitewater River Adjudication files). After studying said briefs an "Opinion on Legal Points Raised by Contestants P. T. Stevens, et al *****" was written by Spencer Burroughs, Attorney for the Division of Water Rights, which Opinion is dated November 3, 1927, and a copy of which is filed herewith and made a part hereof. The conclusion of the Division of Water Rights on the issue is expressed in the following quotation from the last paragraph of the Burroughs' Opinion:

"*****we are of the opinion that appropriations of the character presented are authorized; that the District is explicitly authorized to appropriate water by the act under which it is created (Sections 5 and 6)*****".

The contestants also advance the contention that there is no unappropriated water in Tahquitz Creek available for the applicant. The data collected by the Division of Water Rights in the Whitewater River Adjudication Proceedings indicate that there is only one system which diverts water from Tahquitz Creek; that of the

Agua Caliente Indian Reservation. This system supplies water only to contestants Nellie H. Goffman, et al., and to the Agua Caliente Indian Reservation. According to Proof No. 33 filed by the contestants in the adjudication proceedings, they claim a continuous flow of 1.365 cubic feet per second from Tahquitz Creek, and according to Proof No. 22 filed by the United States Indian Service a continuous flow of 4.80 cubic feet per second is claimed for the Indians; making a total of 6.165 cubic feet per second claimed from the stream.

In the course of an extensive engineering investigation of the water supply of Coachella Valley made for the Coachella Valley County Water District under the direction of A. L. Sonderegger, Consulting Engineer, a report covering which is on file in the Whitewater River Adjudication Proceedings in Folders V-2 and V-3, a record of the daily discharge of Tahquitz Creek at a gaging station located immediately below the intake of the Agua Caliente Ditch was kept covering the period from February 21, 1920 to July 3, 1920. A record of the daily discharge of the creek at the same station was kept by the Division of Water Rights during its field investigation in the adjudication proceedings, the latter record covering the period from March 14, 1923 to June 30, 1923. These records are set forth in Tables 3 and 16 respectively, of the "Report on Water Supply and Use of Water from Whitewater River Stream System" by Gordon Zander. There are no diversions from Tahquitz Creek below the gaging station; consequently the records indicate surplus water to the extent of 6275 acre feet during the 1920 period and 660 acre feet during the 1923 period. The wide difference between the quantities of surplus water that occurred during the two seasons is explained by the fact that three floods occurred in 1920 each causing a peak flow of 45 cubic feet per second or more, while in 1923 no major floods occurred and at no time was the flow of Tahquitz Creek immediately above the intake of the Agua Caliente Ditch in excess of 16 cubic feet per second.

A record of the daily diversions from Tahquits Creek into the Agua Caliente Ditch was kept by the Division of Water Rights covering 1923 period, and is set forth in Table 16 of the Zander report. This record shows an average diversion of 4.15 cubic feet per second in March, 6.44 cubic feet per second in April, 6.15 cubic feet per second in May, and 4.45 cubic feet per second in June. It will be noted that the average diversions during the months of April and May very closely approximate the 6.165 cubic feet per second claimed. The irrigation demand apparently did not reach its peak until toward the end of March, which accounts for the lower average diversion in March. During the month of June practically the entire available water supply was diverted, and such supply gradually dropped to 3.40 cubic feet per second at the end of the month. Accordingly, it may be concluded that the requirements of the Agua Caliente Ditch were fulfilled during the period of the 1923 record, insofar as the available water supply would permit, and that the surplus water measured during that period truly represents unappropriated water.

While no information is available as to the extent of diversions in 1920, it would appear reasonable to assume that the Agua Caliente Ditch diverted to the full extent of its requirements, within the limit of the water supply available, during that season also, and that the surplus water measured in 1920 also truly represents unappropriated water.

The United States Weather Bureau Station nearest to Tahquits Creek, for which records are available for 1920 and 1923, is situated at Indio, some twenty miles southeast. The normal precipitation at Indio during the period between January first and June thirtieth is 1.68 inches. In 1920 the precipitation during said period was 3.02 inches, or 180 percent of normal. Assuming that the run-off of Tahquits Creek in 1920 was also 180 percent of normal, an assumption for which it is admitted there is no justification except in the fact that no better basis for comparison is available, it is very roughly estimated that in a normal year there will occur approximately 3200 acre feet of unappropriated water in Tahquits Creek, neglecting any unappropriated water that may occur during the period between July first and January first.

In 1923, the precipitation recorded at Indio during the period between

January first and June thirtieth was 0.04 inch, or only about $\frac{2}{5}$ percent of normal. While there is reason to believe that the precipitation over the Tahquits Creek watershed during that period was a materially higher percentage of normal than indicated by the Indic record, it is certain that the winter and spring of 1923 were extremely dry periods, and that the 1923 run-off of Tahquits Creek was decidedly sub-normal.

In view of the above, the Division of Water Rights is of the opinion that there is some unappropriated water in Tahquits Creek even in years of extremely sub-normal run-off; that in normal years unappropriated water to the extent of at least 3,000 acre feet probably exists; and that in some years unappropriated water to the extent of the full 5,000 acre feet per annum exists. As the applicant's proposed point of diversion is situated below the intake of the Agua Caliente Ditch, it is apparent that the diversion of water as contemplated could in no way physically interfere with the contestants in the exercise of the rights which they claim, and that the granting of a permit to the applicant "subject to vested rights" could in no way legally prejudice any rights which the contestants may have established.

Contest of Prescott T. Stevens and Palm Valley Water Company

These parties have filed a joint contest against the claim filed by the applicant in the Whitewater River Adjudication Proceedings based upon its Application 2922, in which they advance the same legal objection to the granting of the claim as advanced by Nellie H. Coffman, et al. This objection is fully covered by the Burroughs Opinion filed herewith and made a part hereof, and the conclusion of the Division of Water Rights on the issue has been hereinbefore stated.

As a further grounds of contest, the contestants represent that they

both have certain interests in the waters of Chino Creek and in lands riparian to said stream that would be jeopardized by the applicant's proposed appropriation of 1,000 acre feet per annum of the waters of the stream. As Application 2922 was amended at the hearing, Chino Creek has been entirely eliminated as a source of appropriation, and consequently there no longer remains any conflict between the development proposed by the applicant and the interests claimed by the contestants in and to the waters of Chino Creek.

As a still further grounds of contest, contestant Palm Valley Water Company calls attention to the fact that it has filed an application (Number 4752) for a permit to appropriate five cubic feet per second of the waters of Snow and Falls Creeks, for use for domestic purposes in the town of Palm Springs and vicinity, which application is at present pending before the Division of Water Rights. Altho Application 4752 was not filed until August 27, 1925, over three years subsequent to the filing of Application 2922, the contestant maintains that its proposed use of water for domestic purposes constitutes a higher use than the use to which the applicant proposes to apply the waters of Snow and Falls Creeks which it seeks to appropriate.

It does not appear that the contestant has an absolute basis for its claim of "higher use". According to Paragraph 3 of Application 2922:

"The use to which the water is to be applied is the irrigation of land and for domestic use in the Coachella Valley within said District."

In this connection it is pointed out that all of the inhabitants of Coachella Valley, including those residing in the towns of Indio, Coachella, Thermal, and Mecca, are dependent upon the underground basin underlying the valley for their domestic water supply; and the water supply of this underground basin, in turn, is apparently largely dependent upon the surface waters of the Whitewater River and its tributaries which sink into the gravels along the upper border of Coa-

Coachella Desert. That the annual draft upon the underground water supply of Coachella Valley already exceeds the average annual water crop naturally available for replenishment is indicated by the observed gradual recession in the water-plane and gradual diminution in flow of the various artesian wells in the valley, and also by a comprehensive engineering study made by A. L. Sonderegger, the results of which are set forth in his "Report on Water Supply of Coachella Valley" dated April 1, 1921. If such relation between draft and replenishment continues it is apparent that as time goes on the artesian wells will gradually cease to flow and the water plane will gradually recede to an elevation representing a lift beyond which it will be uneconomical to pump.

It is the intention of the applicant, by means of the project covered by the application under consideration, to attempt to restore the balance between draft and replenishment, or at least to retard the recession of the water-plane and the diminution of artesian flow, through supplementing natural absorption with artificial spreading. It would appear that to the extent to which this desired effect can be accomplished the waters which the applicant seeks to appropriate can be applied to beneficial use, and to the extent to which the underground waters will be used for domestic purposes the use contemplated by the applicant is on a parity with that contemplated by the contestant.

As to that portion of the waters which the applicant seeks to appropriate which would be applied to irrigation use, it is true that Section 15 of the Water Commission Act provides:

"The State water commission shall allow, under the provisions of this act, the appropriation for beneficial purposes of unappropriated water under such terms and conditions as in the judgment of the commission will best develop, conserve and utilize in the public interest the water sought to be appropriated. It is hereby declared to be the established policy of this state that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation. In acting upon applications to appropriate water the commission shall be guided by the

above declaration of policy. The commission shall reject an application when in its judgment the proposed appropriation would not best conserve the public interest."

In interpreting this section, however, the Division of Water Rights has repeatedly held that it was not the intent of the legislature that such provisions should constitute a departure from the old established doctrine that "first in time is first in right", but that they should merely constitute a declaration of policy by which the Division should be guided in passing upon an application to the end that the public interest be best conserved. We believe that Section 15 was intended to authorize the Division to so condition permits as to provide for such future domestic or agricultural development as may appear in the public interest, and to even reject any non-domestic and non-agricultural applications which appear prohibitive of such future domestic or agricultural development. We do not believe, however, that the section was intended to automatically give to any domestic application which may be filed priority over all non-domestic applications to divert from the same source which may be pending at the time. The matter of our interpretation of Section 15 is more fully discussed on pages 8 to 11, inclusive, of our Decision No. A5154-D143 (see Application 5134, Main Folder "A").

In the instant situation there are two applications to be considered, each of which appears extremely important to the welfare of the particular community in whose interest it was filed. The Division has previously held, however, that Section 15 does not contemplate the balancing of the welfare of one community against that of another (See Decision No. A4788, 5661-D 179, pages 18 to 21, inclusive.)

It is therefore concluded that the case under consideration is one wherein the provisions of Section 15 of the Water Commission Act are not intended to apply; and furthermore, the Division is not able to say that the proposed use by the applicant will prove to be less in the public interest than would

that of the contestant if this application were to be denied insofar as Snow and Falls Creeks are concerned, in favor of contestants proposed usage under its subsequent Application 4752.

Conclusions

In view of the foregoing the Division of Water Rights is of the opinion that an appropriation of the character presented by Application 2922 is authorized by law; that the applicant District is explicitly authorized to make such an appropriation by the act under which it is created; that there is unappropriated water available in the various sources named in the application; that the use of such unappropriated water by the applicant will not result in any physical interference with the exercise of any of the prior rights claimed by the protestants or contestants; that the issuance of a permit to the applicant "subject to vested rights" will in no way legally prejudice the prior rights claimed by the protestants and contestants; and that no element of public welfare exists which would justify the Division of Water Rights in rejecting the application insofar as Snow and Falls Creek are concerned in favor of the latter filings by contestant Palm Valley Water Company.

ORDER

Application 2922 for a permit to appropriate unappropriated water having been filed with the Division of Water Rights as above stated, protests and "Notices of Contest" against the same having been filed as above stated, a public hearing having been held, and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 2922, as amended, be approved and that a permit be issued to the applicant subject to such of the usual terms and

conditions as may be appropriate.

Dated at Sacramento, California, this 19th day of April,

1926.

GZ:CG:

(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS