

D File

BEFORE THE DIVISION OF WATER RESOURCES
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

oOo

In the Matter of Application 3846 of Fallbrook Irrigation
District to Appropriate from Santa Margarita River in
San Diego County for Irrigation and Domestic
Purposes.

oOo

DECISION A 3846 D *257*

Decided *May 12, 1930.*

oOo

APPEARANCES AT HEARING HELD AT OCEANSIDE, SEPTEMBER 2, 1926.

For Applicant

Fallbrook Irrigation District

Leroy A. Wright

For Protestants

Rancho Santa Margarita
Vail Company

T. B. Cosgrove
Walter F. Haas

Murray Schloss)
Guy Bogart)
Otto Witchner)
Robert DeLuc)
Charles E. Ramage)

Walter Gould Lincoln

Philip Playter

In propria persona

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

oOo

APPEARANCES AT HEARING HELD AT LOS ANGELES, FEBRUARY 26, 1930

For Applicant

Fallbrook Irrigation District

Leroy A. Wright

For Protestants

Rancho Santa Margarita
Vail Company
Philip Playter
Executors of the Estate of
Murray Schloss, Deceased

T. B. Cosgrove
Walter F. Haas
Walter G. Lincoln
Walter G. Lincoln

Guy Bogart)
Otto Witchner)
Robert DeLuc)
Charles E. Ramage)

No appearance

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights,
Division of Water Resources, Department of Public Works,
State of California.

- oOo

O P I N I O N

GENERAL FEATURES OF APPLICATION

Application 3846 was filed on February 14, 1924. It proposes a maximum storage of 35,000 acre feet per annum of the waters of the Santa Margarita River throughout the entire year of which amount a maximum of 15,000 acre feet per annum will be used in any one year for irrigation and domestic purposes on 10,000 acres of land within the boundaries of the Fallbrook Irrigation District. The point of diversion is located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T 9 S, R 4 W, S.E.B. & M. The application was protested by Rancho Santa Margarita, the Vail Company, Guy Bogart, Murray Schloss, Otto Witchner and Robert DeLuc.

PROTESTS

The protestants claim riparian rights to the flow of the Santa Margarita River and its tributaries and allege in effect that the entire water crop of the river is insufficient to supply the needs for the irrigation of lands riparian thereto and that no water should be transported out of the basin as proposed under Application 3846.

HEARINGS SET IN ACCORDANCE WITH SECTION 1a OF THE WATER COMMISSION ACT

Application 3846 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Rights and being protested was set for public hearing together with Applications 1423 and 4486 of the Vail Company, Applications 4543 and 4550 of Murray Schloss and Application 4688 of Philip Playter, on September 2, 1926, at 10:00 o'clock A.M. in the Woman's Club, Oceanside. Of this hearing applicants and protestants were duly notified.

As there appeared to be a possibility of a compromise between the respective parties, little testimony was introduced and the hearing adjourned sine die. At the request of the attorney for the Fallbrook Irrigation District, a public hearing was set on Application 3846 only on February 26, 1930, at 10:00 A.M. o'clock in Room 1026, Associated Realty Building, Los Angeles. Of this hearing applicant and protestants were also duly notified.

PHYSIOGRAPHY AND HYDROGRAPHY

The Santa Margarita River is the most northerly of the streams of San Diego County. Part of its headwaters lie in Riverside County. Its main branch above Temecula Canyon where the waters pass through the Coast

Range is known as Temecula River which rises in the small canyons on the northerly slope of Smith Mountain and flows as a continuous stream throughout the entire year to the Pauba damsite. Passing through the canyon, the summer flow sinks into the gravels and disappears above the mouth of the canyon to rise again about four or five miles downstream and, except in the driest years, flows in a continuous stream to the lake on the Santa Margarita Rancho where the summer flow is all diverted. During the winter and spring months, however, vast quantities of water flow to the ocean and at times considerable damage has been done. During the flood of 1916 it was estimated that the maximum instantaneous discharge was about 32,000 second feet and the total discharge for the 17 day flood period was 86,600 acre feet. (See Water Supply Paper 446) Another large flood occurred in the month of February, 1927, which did considerable damage.

The drainage area of the Santa Margarita (Temecula) River may be naturally divided into three watersheds. The upper or Pauba watershed comprises an area of about 326 square miles extending from the Warner watershed on the southeast to Nigger Canyon. The middle watershed extends from Nigger Canyon to Temecula Canyon and embraces an area of about 260 square miles. The lower or Santa Margarita watershed extends from the head of Temecula Canyon to the reservoir or lake in the Santa Margarita Rancho about one mile above the "Home Ranch" and comprises an area of about 130 square miles. Between the "Home Ranch" and the ocean there is a small watershed of 27 square miles. The entire drainage area of the watershed is approximately 743 square miles.

The following table shows estimates of the runoff of the Santa Margarita (Temecula) River as shown by engineering reports on file with this office.

Mean Seasonal Runoff in Acre Feet of
the Santa Margarita (Temecula) River

	<u>J. B. Lippincott</u>	<u>Finkle</u>	<u>Jones</u>
At Nigger Canyon (Pauba) Damsite	17,000	11,100	23,000
At Temecula Dam Site	23,000	21,000	29,368
At Fallbrook Dam Site	27,822	---	---
At point 1 mile above Home Ranch	---	---	41,771
At Ysidora	33,082	17,700	---

In Bulletin No. 5 of the Division of Engineering and Irrigation, Department of Public Works, State of California, the average seasonal discharge of the Santa Margarita River at a point one mile below the junction of DeLuz Creek which point is above the main agricultural area is estimated to be 31,900 acre feet per annum from a drainage area of 690 square miles varying from a minimum of 700 acre feet to a maximum of 169,000 acre feet over a fifty year period.

According to applicant's exhibit "D" submitted at the later hearing the runoff of the Santa Margarita River at Ysidora is as follows:

<u>Season</u>	<u>Runoff</u>	<u>Source of Record</u>
1920-21	3.217 A.F.	Finkle's Report
1921-22	69,191 "	"
1922-23	7,095 "	"
1923-24	2,360 "	U.S. G.S.
1924-25	790 "	"
1925-26	15,700 "	"
1926-27	91,200 "	"
1927-28	4,004 "	Rancho Santa Margarita
	Total 193,557 "	
	8 year mean 24,195 "	

This amount flowed into the ocean without serving any useful or beneficial purpose.

CASE OF RANCHO SANTA MARGARITA v. VAIL, et al.

Little if any purpose would be served by a detailed analysis of the several protests. The waters of the Santa Margarita River have been the subject of exhaustive litigation covering the period from October, 1926 to date and a decision was only recently rendered in the Superior Court of San Diego County. We refer to the celebrated case of Rancho Santa Margarita v. Vail, et al. which occupied 444 court days, the transcript covers 55,171 pages and 2,201 exhibits were filed. The decision rendered by Judge Jennings covers some 160 typewritten pages and awards 76% of the waters of the stream to the plaintiffs (Rancho Santa Margarita) and 24% of the waters of the stream to defendants (Vail et al.).

To several interveners with minor claims upon the waters of the stream, by name, Philip Playter, Guy Bogart, Lucy Parkman Bogart and Fred Reinhold, the last three being executors of the estate of Murray Schloss, deceased, the court made minor specific awards all to come out of the 76%

allotted to the plaintiff. The following tabular summary presents briefly the conclusions of the court concerning irrigable lands and water requirements of the several claimants.

Rancho Santa Margarita

Total area within Santa Margarita River watershed	33,793.00 acres
Net irrigable area	20,093.40 "
Amount of water reasonably necessary for irrigation of 20,093.40 acres	47,520.08 A.F.
Net area adapted to profitable irrigation	14,439.14 acres
Amount of water necessary for profitable irrigation	30,238.92 A.F.

Vail, et al.

Total area within Vail holdings in watershed	33,128.00 acres
Net irrigable area	11,174.25 "
Amount of water reasonably necessary for irrigation of 11,174.25 acres	15,398.32 A.F.
Net area adapted to profitable irrigation	5,291.35 acres
Amount of water necessary for profitable irrigation	9,515.42 A.F.

Philip Flayter

Total area within watershed	240.00 acres
Area susceptible of irrigation	60.00 "
Amount allotted (continuous flow)	2.00 m.i.

Guy Bogart et al. executors of Estate of Murray Schloss, deceased

Total area	2,500.00 acres
Area riparian to Santa Margarita River	880.00 "
Area susceptible of profitable irrigation	20.00 "
Amount allotted	All waters of Stone Creek

FILINGS BEFORE THE DIVISION OF WATER RESOURCES TO APPROPRIATE FROM
SANTA MARGARITA RIVER AND TRIBUTARIES

Appl. No.	Use	Filed	Name	Source	Amount	Point of Diversion	Status
1423	Agr. & Dom.	9-2-19	Vail Company	Temescal Creek	40,000 A.F.	NW $\frac{1}{4}$ Sec. 10 T8S R1W	Hearing next step
1922	Agr.	7-19-20	Wm. Schick	Wilson Creek	0.19 c.f.s.	NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 35 T7S R1E	Licensed
2846	Agr. & Dom.	2-14-24	Fallbrook I.D.	Santa Margarita R.	35,000 A.F. (15,000 A.F. use)	SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 12 T9S R4W	Hearing held
4486	Irr. & Stock	2-28-25	Vail Company	Santa Margarita R.	2,300 A.F.	NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 24 T8S R3W S.B.M.	Hearing next step
4543	Irr.	4-17-25	Murray Schloss	Unnamed Creek	0.50 c.f.s.	SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 23 T8S R3W	Hearing next step
4550	Power	4-20-25	Murray Schloss	Temecula River	4.00 c.f.s.	SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 23 T8S R3W	Hearing next step
6000	Irr. & Dom.	9-19-28	C.C. Albachten	Rainbow Creek	0.055 c.f.s.	NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 11 T9S R3W	Permitted
6629	Irr. & Dom.	4-9-30	O.J. McMahon	Unnamed Stream	0.12 c.f.s.	SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 4 T7S R3E	Incomplete

DISCUSSION OF PROTESTS

Under Application 1423 the Vail Company has initiated a right to divert 40,000 acre feet per annum to storage at the Nigger Canyon or Pauba Reservoir site, which amount is nearly twice the mean seasonal runoff from the contributing watershed as shown by the estimates of the engineers and tabulated above. Should Application 1423 be approved it is evident that the Fallbrook Irrigation District would be dependent upon the runoff of the Santa Margarita River from the watershed between the Pauba dam site and the Fallbrook dam site which according to the reports of the various engineers averages from about 6,000 acre feet to 10,000 acre feet per annum.

It is not seen wherein the Vail Company has shown any grounds of protest against the approval of Application 3846 inasmuch as its points of diversion, both present and proposed, are above the proposed point of diversion of the applicant; also Application 4436 of the Vail Company is subsequent in time to Application 3846. Therefore it would be both legally and physically impossible for the applicant to interfere with its rights whatever they may be. The protest of the Vail Company may therefore be dismissed.

Applicant's exhibit K, introduced at the hearing held February 26, 1930, indicates that in 1926, 352.4 acres of land were irrigated within the boundaries of the Rancho Santa Margarita lying within the Santa Margarita watershed. At the same hearing applicant's engineer stated that this area may have increased to 400 acres at the present time. This estimate was

questioned by the protestants but as no other showing was made upon this point we must accept the evidence at hand. It is certain that a very small proportion of the water which can be utilized for profitable irrigation by the Rancho Santa Margarita has actually been applied to beneficial use and the records of the Water Resources Branch of the United States Geological Survey show that a large quantity of water is wasted into the ocean past the Ysidora gaging station.

The lands of the other protestants are below the proposed point of diversion described in Application 3436. No evidence was introduced by these protestants in support of their contention but from the decision rendered by Judge Jennings it appears that the use has been small and that very little of their lands are susceptible to profitable irrigation.

The waters which flow into the ocean during the winter and spring months are largely of a torrential and intermittent character as shown by the records of the United States Geological Survey and for this reason storage must be resorted to in order that they may be applied to beneficial use which by recent court decisions cannot legally be effected under claim of riparian ownership. (Herminghaus et al. v. Southern California Edison Company, 200 Cal. 81; 252 Pac. 607 and Seneca Consolidated Gold Mines Company v. Great Western Power Company of California 79 C.E. 267)

The only way therefore for legal use to be made of the greater portion of the waters which we have shown flow to the ocean is by storage under an appropriative right. Neither the Rancho Santa Margarita nor the other protestants with the exception of the Vail Company have initiated such a storage right before this office and therefore the applicant is entitled to the approval of its application subject to existing rights.

The use proposed is a beneficial one, the Fallbrook Irrigation District is duly organized and as such has the right to condemn the site upon which the reservoir is located which is within the Rancho Santa Margarita.

ORDER

Application 3846 of the Fallbrook Irrigation District for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, public hearings having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 3846 be approved and that a permit be granted 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 *12th* day of *May*, 1930.

EDWARD HYATT, STATE ENGINEER

BY *Harold Conkling*
Deputy

TES:MP