

Before the Division of Water Resources
Department of Public Works
State of California

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In the Matter of Application 9455 of Eva M. Arnerich
(a public utility) to appropriate from Guadalupe
Creek, a tributary of San Francisco Bay in
Santa Clara County, for Irrigation Purposes

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Decision A 9455 D - 445

Decided October 6, 1939

APPEARANCES AT HEARING HELD SEPTEMBER 12, 1939, AT SAN JOSE, CALIFORNIA.

For Applicant

Eva M. Arnerich

E. L. Maxwell

For Protestants

Santa Clara Valley Water Cons. District

Herbert C. Jones

Nick Nelson

Marshall S. Hall

Joe Gattuccio)
Salvatore Cali)
Caesar and Clementina Tomasini)
Albert, Leon and Henry Athenour)
Almaden Vineyards Corporation)

Burnett & Burnett
by
John M. Burnett

C. and Rosa Bassetti

no appearance

Pete La Barbera

no appearance

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

O P I N I O N

General Description of Project

Eva M. Arnerich, (a public utility) proposes under Application 9455
to appropriate an amount of water not to exceed 3 cubic feet per second from
Guadalupe Creek throughout the entire year for the irrigation of 2846 acres
of land lying approximately within the area bounded on the north by Foxworthy

Road, on the west by Los Gatos Creek, on the south by Blossom Hill Road and on the east by Kirk Road within T 8 S, R 1 W, and T 8 S, R 1 E, M.D.B. & M. as shown upon a map filed with the Division of Water Resources on December 15, 1938. The proposed point of diversion is described as being within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 18, T 8 S, R 1 E, M.D.B. & M.

At the point of diversion described above applicant has already installed a pumping plant of a capacity of 1800 g.p.m. which has been in use for several seasons. Water is pumped through 50 feet of 12 inch and 15,000 feet of 10 inch pipe to the place of use where it is used for irrigation purposes. While the gross area to be served contains 2846 acres the net area to be irrigated will be confined to approximately 1000 acres per season.

PROTESTS
Water

The Santa Clara Valley/Conservation District has two permits before this office to appropriate from Guadalupe Creek. Under Application 5853, Permit 3009, it may appropriate 10,000 acre-feet per annum for underground storage to be collected from about November 15 to about May 1 of each season. There are two points of diversion, the lower point being within the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 9 and the upper point being within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 9, T 8 S, R 1 E, M.D.B.M. approximately 2 $\frac{1}{2}$ and 2 miles respectively below the proposed diversion point of the applicant. The water is to be recovered by pumping from wells and used for irrigation and domestic purposes on 2560 acres within Section 32, T 7 S, R 1 E and Sections 4, 5 and 8, of T 8 S, R 1 E, M.D.B. & M.

Water

Under Application 7142, Permit 4917, the Santa Clara Valley/Conservation District may appropriate 3500 acre feet per annum from Guadalupe Creek by storage to be collected throughout the entire year. The point of diversion is at the storage dam within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, T 8 S,

R. I. E., W. D. B. & M., about 4 miles above the proposed diversion point of the applicant. Releases from surface storage are charged into the ground water basin at points downstream and are recovered for use on overlying lands at individual pumping plants scattered throughout Santa Clara Valley Water Conservation District.

The District has been engaged in the spreading of water under Application 5655 since 1929 and has stored water in and released water from the Guadalupe Reservoir under Application 7142, since 1935. It claims that the pumping of water from the gravels underlying the District has greatly lowered the water table with the result that all the waters flowing in Guadalupe Creek are required to replenish the underground strata; that the District has been organized for the purpose of conserving the waters of Guadalupe Creek for the benefit of lands within the District and that should Application 9455 be approved it would result in reducing the amount of water available to the District, thereby interfering with and obstructing the conservation work. Protestants also claim that during a portion of the year there is no natural flow of water in Guadalupe Creek and during this period the only flow in the creek is water which has been released from its reservoir. It is concerned lest the applicant attempt to take water which has been so released for the benefit of the District.

Protestants Joe Gattuccio, Nick Nelson, Salvatore Cali, Caesar and Clementina Tomasini, C and Rosa Lassetti, Pete La Barbera and Alameda Vineyards Corporation divert water from Guadalupe Creek through the Masson ditch, the intake of which is on the lands of the Almaden Vineyards Corporation and below the applicants' proposed point of diversion. The protestants claim rights to the use of water which applicant seeks to appropriate

which rights were initiated prior to the effective date of the Water Commission Act and allege in effect that the amount of water which applicant is seeking to appropriate is practically the entire flow of Guadalupe Creek and is, during portions of the year, the entire flow of said Creek.

Albert, Leon and Henry Athénour claim a right to the use of the waters of Guadalupe Creek by virtue of riparian ownership and use and that their points of diversion are located from about 3/4 of a mile above to about 3/4 of a mile below the applicants' proposed point of diversion. These protestants also allege in effect that the amount of water which applicant is seeking to appropriate constitutes practically the entire flow of the stream.

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

Application 9455 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing on Tuesday, September 12, 1939, at 10:00 o'clock A.M. in Supervisors' Room, Court House, San Jose, California. Of this hearing applicant and protestants were duly notified.

GENERAL DISCUSSION

At the hearing it was agreed by the parties present that a permit may be granted for an amount of water not to exceed the amount applied for which permit should include the following special terms and conditions:

(1) That water shall only be diverted when the natural flow of the stream as distinguished from the water released by the Water Conservation District, is flowing on the surface of the stream under the bridge where the Almaden Road crosses the Capitancillos Creek (Guadalupe Creek).

(2) The approval of this application does not give the applicant any right to take or use any reservoir releases of the protestant, Santa Clara Valley Water Conservation District, such

releases being the private waters of said District and subject to the control and disposition thereof by said District.

(3) That the granting of the permit shall not prejudice the rights of the protestants in the action pending in the Superior Court in contesting applicant's right to divert water from wells.

(4) That the Division of Water Resources shall retain continuing jurisdiction in order that the actual operation of these restrictions can be observed from season to season, or at least over the first season in order to ascertain if they will result as contemplated and that none of the parties shall be prejudiced by reason of some physical condition being possibly different from that which can be foreseen at the present time.

Although it was agreed by those present at the hearing that permit might issue if made subject to terms and conditions as set forth above it is believed that the season of diversion should also be limited to avoid possible diversion by the applicant of waters released from storage in Guadalupe Reservoir as distinguished from the natural flow. The season of diversion named in Application 9455 is from January 1 to December 31 of each season and although the record indicates that at times there is unappropriated water available for the use of applicant, this water is only available during the winter and spring months.

The United States Geological Survey has established a gaging station on Guadalupe Creek at a point approximately one mile above applicants' proposed point of diversion and approximately three miles below the Guadalupe Reservoir of the Santa Clara Valley Water Conservation District. Complete records of the runoff of Guadalupe Creek are available for the seasons of 1931-32 to 1937-38 inclusive. From these records the following table has been prepared.

Runoff of Guadalupe Creek at Guadalupe

<u>Season</u>	<u>Discharge (A.F.)</u>
1931-32	8,800
1932-33	1,960
1933-34	5,240
1934-35	7,110
1935-36	6,510
1936-37	9,830
1937-38	22,260
7 year mean	8,800 A.F.

Although a long-time record of flow has not been established, testimony presented at the hearing indicated that the runoff during the season of 1935-36 was considered to be about 90% normal and that the runoff during the season of 1936-37 was about normal.

Testimony presented at the hearing indicated that water was released from storage in Guadalupe Reservoir at times when the natural flow decreased to such an extent that it was insufficient to fill the percolation basins and that it was found by experience that it was the best practice to begin the release of water from the reservoir before the stream bed had become dry. For this reason waters are released at times when the natural flow in the Creek was as much as approximately 6 to 12 cubic feet per second.

Records of the operations of Guadalupe Reservoir on file with this office indicate that during the low flow periods of the years of operation releases from Guadalupe Reservoir have been made as follows:

<u>Season</u>	<u>Period of Release</u>
1935-36	March 15 to June 7
1936-37	April 20 to Sept. 29
1937-38	May 6 to Sept. 21

It may be considered for all practical purposes that during a season of normal runoff the District will release water from about May 1 to about September 30.

The Guadalupe Reservoir was not operated until the season of 1935-36 and therefore the discharge of Guadalupe Creek at Guadalupe for the season of 1931-32 as set forth in U.S.G.S. Water Supply Paper 736 may be considered as being indicative of the natural flow in the creek during a season of normal runoff. This record indicates that on May 1, 1932 the flow in Guadalupe Creek at this station was 3.4 cubic feet per second, gradually decreasing to 0.0 cubic feet per second on July 26, 1932. There was no flow in the creek from July 26 to November 19, 1932.

The following table has been prepared from the United States Geological Survey records.

Natural Flow in Guadalupe Creek at Guadalupe

<u>Season</u>	<u>Flow on May 1 (c.f.s.)</u>	<u>Period of no flow</u>
1929-30	3.6	July ___ to ___ (Record incomplete)
1930-31	0.8	June 9 to ___ (Record incomplete)
1931-32	3.4	July 26 to November 19
1932-33	3.6	July 24 to October 29
1933-34	3.3	July 2 to November 30
1934-35	13.0	October 1 to October 29
1935-36	6.0 (estim.)	September 18 to October 23
1936-37	5.0 (estim.)	(Not determinable from re-
1937-38	14.0	(ords due to reservoir operation)

From the above table it appears that although there is some flow in Guadalupe Creek on May 1st of each season of record, the amount of flow is relatively small and in fact insufficient to satisfy the claims of other protestants below.

It is therefore the opinion of this office that Application 9485 be approved for the appropriation of water during the season from about October 1 to about May 1 only and that a permit be issued to the applicant subject to the usual terms and conditions as may be appropriate and subject also to certain special terms and conditions which will conform substantially to those stipulated to at the hearing.

ORDER

Application 9455 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 9455 be approved for an amount of water not to exceed 3 cubic feet per second to be diverted from about October 1 to about May 1 of each season for irrigation purposes and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and to the following special terms and conditions to wit:

(1) Diversions hereunder may be made only when, under natural conditions as existed on the date of filing Application 9455, to-wit November 16, 1938, the natural flow of Guadalupe Creek as distinguished from the water released by the Santa Clara Valley Water Conservation District, is flowing on the surface of the streambed at the bridge where the Almaden Road now crosses said Creek.

(2) Approval of this application shall not be construed as lending any color of right to water released from reservoirs at points upstream except insofar as these said releases may represent abandoned water.

(3) The approval of this application shall not be construed as prejudicing the rights claimed by protestants in the action pending in the Superior Court in contesting the right claimed by permittee to divert from wells.

(4) Permit terms shall be subject to revision by the Division of Water Resources if at any time it appears that a change in the physical conditions justifies such alteration.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 6 day of Oct 1939.

EDWARD HYATT, State Engineer

By MAROLD CONKLING
Deputy

(Seal)