

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

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In the Matter of Application 10309 of Temescal Water Company  
to appropriate from San Jacinto River in Riverside  
County for Irrigation and Domestic Purposes

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Decision A. 10309 D. 497

Decided *February 5, 1943*

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APPEARANCES AT HEARING HELD IN LOS ANGELES ON DECEMBER 16, 1942

For Applicant

Temescal Water Company

W. R. Chawner

For Protestants

Lake Elsinore Chamber of Commerce  
City of Elsinore and Lake Elsinore Valley  
Water Users Association  
The Metropolitan Water District of  
Southern California  
Nuevo Water Company  
Grand Avenue Civic Association  
South Elsinore Mutual Water Company  
Perris Valley Conservation District  
Samuel Poorman, Jr. et al  
Joseph Cereghino

No appearance

Eugene Best

J. A. Howard

H. P. Hibbard

No appearance

P. H. Albright

H. I. Dockweiler

Samuel Poorman, Jr.

No appearance

For Interested Parties (not record protestants)

Hemet Packing Company  
Fruitvale Mutual Water Company

H.O. Wackerbarth

B. F. Anderson

Examiner

Harold Conkling, Deputy State Engineer in charge of Water Rights,  
Division of Water Resources, Department of Public Works, State of  
California, assisted by Spencer Burroughs, attorney for the Division.

## O P I N I O N

### Description of the Proposed Appropriation

Under licensed Application 1752 the right of the Temescal Water Company was confirmed to an amount of water not to exceed 12,000 acre feet per annum of the waters of the San Jacinto River to be collected to storage in its Railroad Canyon Reservoir from about December 1 to about June 1 of each season for agricultural uses within the Corona Colony. The point of diversion is at the Railroad Canyon Reservoir dam within the NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 2, T 6 S, R 4 W, S.B.B.M.

Under Application 10309 filed by the Temescal Water Company on October 29, 1941, it seeks to supplement the rights under licensed Application 1752 by asking for an appropriation of 13 cubic feet<sup>per second</sup>/by direct diversion and 15,000 acre feet per annum from the San Jacinto River throughout the year for irrigation and domestic purposes within the Corona Colony. The point of diversion is at the Railroad Canyon Reservoir dam within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 2, T 6 S, R 4 W, S.B.B.M. It is proposed to increase the capacity of the Railroad Canyon Reservoir by installing flash boards in the spillway section. Applicant states that the application was filed for the purpose of appropriating natural flow of the San Jacinto River not encompassed in Application 1752 together with water from the San Jacinto tunnel of Metropolitan Water District and sewage effluent from Camp Haan and March Field which may be diverted into the channel of the San Jacinto River.

### Protests

The Directors of Lake Elsinore Chamber of Commerce allege in effect that any additional diversion of fresh water from Lake Elsinore would result in the lake becoming a public health menace, also that Lake Elsinore and its

immediate adjacent farm area is the natural drainage reservoir of the San Jacinto River and to divert more water from this area would result in depleting the underground water reserves.

The City of Elsinore and Lake Elsinore Valley Water Users Association allege in effect that the proposed appropriation will result in lowering the level of Lake Elsinore thereby rendering it unsuitable for recreational purposes resulting in a decline of property values.

The Metropolitan Water District of Southern California objects to the proposed appropriation of water from its San Jacinto tunnel maintaining that it has the right (1) to exclude from that tunnel waters other than Colorado River Water; (2) to make such lawful disposition of drainage waters as in its discretion may be required from time to time; (3) to lawfully dispose of such waters other than by discharging them through its aqueduct if necessary in the construction or operation of its aqueduct; (4) to prevent the issuance of any permit requiring the District to dispose of any water in such a manner as to serve any claimed present or future beneficial consumptive use by applicant or any other person.

The Nuevo Water Company claims a right to divert from 7 wells situate in T 4 S, R's 2 and 3 W, S.B.B.M., that use was commenced in 1913 and that approximately 1500 miners inches are used each year from March 1 to November 30 for irrigation purposes by its stockholders. Protestant alleges in effect that the waste waters which are now flowing out of the San Jacinto tunnel previously contributed to its water supply and alleges in effect that should applicant be granted the right to appropriate these waters it would result in diminishing its water supply.

The Grand Avenue Civic Association in a protest signed by some 50

individuals claims that all water which applicant proposes to appropriate as a result of the construction of the San Jacinto tunnel, properly belongs to Lake Elsinore and alleges in effect that the diversion of this water as proposed would detract from the value of the lake and neighboring property.

The South Elsinore Mutual Water Company claims a right initiated prior to the effective date of the Water Commission Act to approximately 600 miners inches of water for irrigation and domestic purposes and alleges in effect that the proposed appropriation would result in decreasing the amount of water which percolates into the underground basin at the easterly end of Lake Elsinore from which its supply is obtained.

The Perris Valley Conservation District for more than 50 years last past has been obtaining its water supply from wells in Perris Valley. It alleges in effect that should Application 10309 be approved it would result in the diversion of water which would normally flow into the underground basin of Perris Valley.

Samuel Poorman, Jr., Alice P. Hoyt, Charles Hoyt and Edward Poorman, both as successors in interest of Samuel Poorman, deceased, and as successors in interest of Edward McGary, deceased, divert water under claim of riparian ownership and under contract with the Metropolitan Water District at a point within the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 16, T 4 S, R 1 W, S.B.B.M. They allege in effect that they have a prior right to the waters which applicant is seeking to appropriate.

Joseph Cereghino claims the ownership of an orange grove on the northwest shore of Lake Elsinore which is irrigated from a well. He alleges in effect that the proposed appropriation would tend to lower the lake level, thus detracting from the value of his property.

The Hemet Packing Company and the Fruitvale Mutual Water Company, although not record protestants, objected at the hearing to the approval of Application 10309 insofar as it proposed to appropriate water from the San Jacinto tunnel. The points of diversion of both of these parties are upstream from applicant's proposed point of diversion.

Hearing Set in Accordance With Section 1a  
of the Water Commission Act

Application 10309 was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing on Wednesday, December 16, 1942 at 2:00 o'clock P.M. in Room 803 California State Building, Los Angeles, California. Of this hearing applicant and protestants were duly notified.

General Discussion

On April 5, 1920, Temescal Water Company filed Application 1752 for a permit to divert 12,000 acre-feet of the waters of the San Jacinto River from December 1 to June 1 of each season to storage in its proposed Railroad Canyon Reservoir. The application was approved on November 29, 1930 and the right has been confirmed by license.

In August 1927 the Temescal Water Company commenced the construction of its dam near the mouth of Railroad Canyon and several suits were brought against the Company by the City of Elsinore and others seeking to enjoin the construction of the dam upon the grounds that it would cut off the flow of the San Jacinto River above Lake Elsinore which is used for recreational purposes and also above a water bearing debris cone lying between the mouth of Railroad Canyon and Lake Elsinore from which basin water was pumped for irrigation purposes.

Finally a compromise was effected which was expressed in a contract executed on October 29, 1937 between South Elsinore Development Company, the Mariposa Company, Clevelin Realty Corporation, Lake Shore Beach Company, South Elsinore Mutual Water Company, City of Elsinore and certain individuals as parties of the first part and Temescal Water Company, party of the second part, a copy of which contract was filed with this office on August 30, 1937 in connection with Application 8975 (cancelled) of the Temescal Water Company.

Among other things the contract provided for the construction of the Railroad Canyon Reservoir with the understanding that the Temescal Water Company should permit all subsurface water at the dam site to pass through the dam, that the Water Company might store in the reservoir "the first waters flowing in Railroad Canyon at or above the dam (exclusive of Salt Creek waters) up to a maximum in any one year of 2000 acre feet;" (this 2000 acre feet being agreed upon as the amount of water to which the Water Company was entitled under its "prescriptive right"); that in addition thereto the Water Company might at its option store in the reservoir, waters of Ethanic or Perris Valleys subject to the allocation as provided for in the contract; that all waters diverted from San Jacinto River and/or Salt Creek and all other waters impounded in the reservoir, less the amount of "prescriptive water" impounded therein and less losses of water stored in the reservoir should be allocated in the following rates: one-sixth to the parties of the first part and five-sixths to the parties of the second part; that so far as the first parties were concerned the second party had the right to divert and store in the reservoir an unlimited quantity of the waters of San Jacinto River and Salt Creek whenever the level of Lake Elsinore was 1255 feet above sea level and that certain maximum quantities could be diverted and stored when the lake level lay

between certain other elevations but with the understanding that the Water Company would not divert or store any water from the San Jacinto River, or Salt Creek, other than its "prescriptive water" whenever the lake level was at or below an elevation of 1245 feet above sea level. The contract also provided as follows: "The Water Company may also impound and store such waters, in addition to the waters of the San Jacinto River and Salt Creek, as it may desire".

In 1933, after the Railroad Canyon Reservoir dam was constructed, the Metropolitan Water District commenced the construction of a 13 mile tunnel through the San Jacinto mountains. In the course of construction large quantities of water were encountered and were released in such a manner that they entered the channel of the San Jacinto River and were impounded in the Railroad Canyon Reservoir of the Temescal Water Company.

By 1936, the last of a series of dry years, Lake Elsinore had receded until it had a maximum depth of only six feet and a volume of about 5,000 acre-feet. This condition caused the death of fish therein and gave rise to noxious odors which pervaded the entire city of Elsinore. The lake became unsuitable for recreation which resulted in a decline of property values in the City, a decrease in its population and a loss of business to its inhabitants.

During this period the Temescal Water Company had continued to take the waste water from the tunnel, it being its opinion that this water was not a portion of the waters of the San Jacinto River which were included in the contract as being subject to allocation and an action was brought by the City of Elsinore against the Temescal Water Company for the purpose of determining whether or

not the water reaching the reservoir as the result of the tunnel operations came within the provisions of the contract and for the purpose of enforcing the City's rights thereto.

The Court found in all respects in favor of the City of Elsinore, finding, among other things, that the water intercepted in drilling the tunnel formed a part of the source of supply of the San Jacinto River and except for such interception would have formed a part of the flow of that river; that the water issuing from said tunnel was not developed and foreign water in respect to the San Jacinto River and that the Temescal Water Company had for more than two years stored in its reservoir and diverted past Lake Elsinore large quantities of such water in excess of the amounts permitted by the contract; that the defendant threatened to continue the diversion and storage of large quantities of water in excess of the amounts permitted by the contract, which water would otherwise reach Lake Elsinore and raise its level; and that the lowering of the lake level had caused certain conditions which had resulted in injury to the City of Elsinore and its inhabitants for which pecuniary compensation could not afford adequate relief.

As a conclusion of law, the Court found that all of the water in question and any other water stored in or diverted from this reservoir was and should be subject to the terms of the agreement between the parties, including the provision therein that any water diverted, impounded or stored by means of this dam, with the exception of the prescriptive right referred to above, should be allocated between the parties in accordance with the terms of the contract. Judgment was rendered accordingly, it being decreed in effect, that all of the water in controversy was and should be subject to the terms of the agreement and that an injunction should issue restraining the



Temescal Water Company from diverting into or storing in its reservoir or removing any such water in excess of the amounts permitted by the contract.

The case was appealed and the decision of the lower court was upheld, the appellate court concluding "that the waters from the aqueduct tunnel do in fact constitute a portion of the waters going to make up the natural flow of the San Jacinto River. That the underground reservoirs constitute a support to the surface flow and do feed the springs and streams tributary to said San Jacinto River and that any asportation of said tunnel waters from the stream or watershed would seriously and injuriously affect the flow of said stream throughout its entire course".

Under date of December 28, 1942 Temescal Water Company addressed a letter to protestants City of Elsinore, Lake Elsinore Valley Water Users Association and South Elsinore Mutual Water Company, agreeing that full recognition would be given to that certain agreement dated October 29, 1927, commonly referred to as the "Elsinore Contract" and to a certain judgment of the Superior Court of Riverside County, California, dated January 22, 1938, in that certain action entitled City of Elsinore v. Temescal Water Company, interpreting said contract, which judgment was affirmed by the District Court of Appeal, the opinion being reported in 36 Cal. App. 2d 116.

As a result of this letter the protests of the City of Elsinore, Lake Elsinore Valley Water Users Association and South Elsinore Mutual Water Company were withdrawn. Although no appearance was made at the hearing on behalf of the protestants Directors of Lake Elsinore Chamber of Commerce, Grand Avenue Civic Association and Joseph Cereghino, their protests were similar to those of the City of Elsinore and we feel that their protests may be dismissed as a result of the applicant's letter of December 28, 1942. Furthermore by not appearing at the hearing these protestants have failed to support

the burden of proof appropriate to a moving party.

As to protestants Metropolitan Water District, Nuevo Water Company, Ferris Valley Conservation District and Samuel Poorman Jr. et al, the points of diversions of these protestants are above the proposed point of diversion of the applicant and therefore they are in a position both legally and physically to take such water as they may be entitled to before it reaches the applicant's dam. Their protests may therefore be dismissed.

ORDER

Application 10309 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 10309 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 *5th* day of *February* 1943.

EDWARD HYATT, State Engineer

BY *Harold Conkling*  
Deputy State Engineer

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