

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

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In the Matter of Application 11078 of Kenneth A. Westover
to Appropriate Water from an Unnamed Seepage Tributary
to Santa Ysabel Creek in San Diego County
for Irrigation Purposes.

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Decision A. 11078 D. 538

Decided August 30, 1946

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APPEARANCES AT INVESTIGATION CONDUCTED BY THE DIVISION OF
WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION
ON JUNE 1, 1946

For Applicant

Kenneth A. Westover

In propria persona
J. N. McLeod

For Protestant

City of San Diego

Fred D. Pyle
Paul Beerman
Bertrand L. Comparet

For Division of Water Resources

Biscoe Kibbey, Associate Hydraulic Engineer
for Gordon Zander, Supervising Hydraulic Engineer
Division of Water Resources, Department of Public Works
State of California

O P I N I O N

General Description of Proposed Development

Application 11078 was filed by Kenneth A. Westover on June 22, 1945.

It proposes an appropriation of 0.022 cubic foot per second or approximately

14,000 gallons per day from an unnamed seepage within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 36, T 12 S, R 2 W, S.B.B. & M. tributary to Santa Ysabel Creek and San Dieguito River in San Diego County, to be diverted from April 1 to December 31 of each season for the irrigation of 18 acres of orchard within the said NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of projected Section 36.

PROTEST

A protest against the approval of Application 11078 was filed by the City of San Diego which claims a right to the use of water from the San Dieguito River, which right is based upon "prior appropriation and beneficial use of the waters of the San Dieguito River and purchase of riparian rights on more than 18,207 acres of land below the applicant." The City claims that in addition to the delivery of 3,000,000 gallons per day to the City of San Diego, water is supplied under contract to the San Dieguito Irrigation District, Santa Fe Irrigation District and the Del Mar Water Light & Power Company. It alleges in effect that if the applicant is allowed to divert 0.022 cubic foot per second as proposed it would result in impairing the City's source of water supply to that extent and also that should Application 11078 be approved it would result in establishing a precedent for the filing of other applications, the approval of which would increasingly diminish the amount of water to which the City is entitled.

Field Investigation

Stipulations under Regulation 12B (now Section 733(b)) of the Rules and Regulations of the Division of Water Resources having been signed by applicant and by the attorney for the protestant and having been approved by the State Engineer, an investigation was conducted at the site of the proposed appropriation by an engineer of the Division on June 1, 1946. Accompanying our engineer were

Kenneth A. Westover, and J. N. McLeod, a mining engineer, representing the applicant and Fred D. Pyle and Paul Beerman, hydraulic engineers and Bertrand L. Comparet, deputy city attorney representing the protestant City of San Diego.

Records Relied Upon in Arriving at a Decision

In arriving at a decision in the matter, reliance is placed upon the entire file on Application 11078, but particularly upon the report of Mr. Kibbey who conducted the field investigation; also upon Application 12-2315 of the City of San Diego.

GENERAL DISCUSSION

The City of San Diego is the successor to the interest of the San Diego Mutual Water Company in Application 12-2315 which was filed under Section 12 of the Water Commission Act for a certificate prescribing the time within which to apply 37,700 acre-feet per annum of the waters of San Dieguito River to beneficial use. The original filing was made under a notice of appropriation dated February 21, 1914 and recorded in Book 4 of Water Claims at page 203 et seq. of the records of the County Recorder of San Diego County. On July 23, 1921 Certificate 12-10 was issued fixing the time within which to apply the water to a useful or beneficial purpose as ending June 1, 1926. Further certificates were issued the last one being issued on December 23, 1936 granting an extension of time until January 1, 1941 within which to apply the water to full beneficial use. No further certificates were issued as it appeared from a field investigation of the project made on April 17, 1941 that use had been completed. The net safe yield of Hodges Reservoir at the time of the investigation was approximately 8.66 cubic feet per second or 6,272 acre-feet per annum made available by storage in a reservoir of 37,700 acre-feet capacity and the records indicated at the time that amounts in excess of the net safe yield had been impounded during

a single collection period and subsequently applied to beneficial use. During the 15 year period 1927 to 1941 inclusive water spilled over the dam during the years 1927, 1928, 1932, 1933, 1937, 1938, 1939, 1940 and 1941. Water released from Hodges Reservoir is conveyed through the Carroll conduit to San Dieguito Reservoir whence it is distributed to the Santa Fe Irrigation District, the San Dieguito Irrigation District, the Del Mar Water, Light and Power Company and the City of San Diego.

The watershed above the applicant's proposed point of diversion comprises less than one-half square mile of the 303 square miles which comprise the drainage area above Hodges dam. Normally the gulch from which applicant seeks to appropriate is dry excepting during periods of rainfall, but now there is a narrow strip of vegetation in the bed of the gulch which is maintained by seepage of waste water from the irrigation of citrus orchards in the upper watershed. This waste water is foreign to the watershed of Santa Ysabel Creek having been diverted from the San Luis Rey River presumably under contract with the San Diego County Water Company by the Escondido Mutual Water Company and it is unlikely that this waste water was in contemplation at the time the City of San Diego initiated the right under its notice of appropriation dated February 21, 1914. Furthermore, this waste water probably never reaches Santa Ysabel Creek during the irrigation season and consequently does not contribute to the water appropriated by the City of San Diego.

After a consideration of the facts as brought out at the field investigation, the representatives of the protestant stated that they had no objection to the approval of Application 11073. They took the stand, however, that they did not care to withdraw the protest as they considered an overruling by the Division more desirable from a legal standpoint.

Conclusion

The record indicates that the water which applicant is seeking to appropriate is water which seeps into the gulch from lands irrigated by the Escondido Mutual Water Company from water originating in the San Luis Rey River watershed, that this water is foreign to the watershed of the San Dieguito River and its tributaries and that it does not contribute to the flow of Santa Ysabel Creek which is claimed by the protestant as a source of its water supply. We are, therefore, of the opinion that Application 11078 should be approved subject to prior vested rights.

At the time of the issuance of the permit, the applicant should be informed that inasmuch as the water which he is seeking to appropriate is waste or seepage water resulting from the irrigation of lands above, no right to the continuance of flow is assured.

O R D E R

Application 11078 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been received, a field investigation having been made, a stipulated informal hearing having been held in accordance with Section 733(b) of the Rules and Regulations of the Division of Water Resources and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11078 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 30th day of August, 1946

EDWARD HYATT, State Engineer

By A. W. Edmiston

