

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

oOo

In the Matter of Application 11651 of Harbison Canyon Mutual Water Company to Appropriate Water from Silver Brook, Tributary to Sweetwater River in San Diego County for Domestic Purposes.

oOo

Decision A. 11651 D. 569

Decided February 2, 1948

oOo

APPEARANCES AT INFORMAL HEARING CONDUCTED ON JULY 29, 1947, UNDER THE PROVISIONS OF ARTICLE 13, SECTION 733b OF THE CALIFORNIA ADMINISTRATIVE CODE

For the Applicant

Harbison Canyon Mutual) (Allison B. Lutterman, President
Water Company) (Donald A. Stewart, Attorney

For the Protestants

City of Chula Vista) Dewitt A. Higgs, City Attorney
California Water and) (A. F. Poulter, District Manager
Telephone Company)
Estella Neal In propria persona

For the State Engineer

Biscoe Kibbey, Associate Hydraulic Engineer, Division of Water Resources, Department of Public Works, State of California

oOo

OPINION

General Description of Project

The application was filed with the Division of Water Resources by Donald A. Stewart, Attorney at Law, on behalf of Harbison Canyon Mutual Water Company, on December 9, 1946. It contemplated a diversion of 0.75 cubic foot per second (later reduced to 0.079 cubic foot per second) from January 1 to December 31

of each year from Silver Brook, a tributary to Sweetwater River, for domestic use. Diversion is to be effected by pumping from wells, 3 in number, of which 2 are already in operation. The purpose for which water is desired is to supply the domestic needs of 255 families, including the watering of lawns and gardens of less than 1/2 acre each.

Protests

California Water and Telephone Company protests on the grounds that the proposed development will take water that is now being appropriated and beneficially used by the protestant for service as a public utility in National City, Chula Vista and contiguous areas. This protestant claims a right based upon prior appropriation and also upon riparian ownership. It asserts that it has been diverting all of the normal flow, both surface and subsurface, and the floodwaters of Sweetwater River, since 1886; and claims that the waters so diverted and stored are used for domestic, industrial, irrigation and public purposes in the Sweetwater area and for agricultural purposes on its own land in Jamacha Valley.

The City of Chula Vista protests on similar grounds, being served also by California Water and Telephone Company. It claims in effect that the entire drainage of the Sweetwater system has been and now is used by the local inhabitants, and that such use is based on long established, valid rights.

Estella Neal protests that the proposed development will cause a lowering of the local water table and thus necessitate a large expenditure for the development of another well which in turn may be of no value. She asserts that she is engaged in business which includes the operation of recreation grounds and a cafe; that her water rights

have been established by continuous use over the past 10 years; that her use averages 52,000 gallons per year; and that insufficiency of water will mean the loss of her business.

The applicant answers the protests by stating that the protestants will not be injured by the appropriation sought; that the water applied for is to be obtained from wells, these and the place of use served being located in Harbison Canyon; that use will be limited to domestic consumption by some 250 families; and that substantially all of the water diverted will be returned, after unappreciable loss, to the same channel and basin from whence it was drawn.

Field Investigation

Stipulations to an informal hearing under the provisions of Article 13, Section 733b of the California Administrative Code were entered into by both the applicant and the protestants, the stipulations were approved by the State Engineer and an investigation was conducted at the site of the proposed appropriation by an engineer of the Division on July 29, 1947.

Records Relied Upon

Application 11651 and all data and information on file therewith.

Discussion

In the discussion preliminary to the investigation proper it was brought to the attention of the applicant's representatives that the amount applied for (0.75 cubic foot per second or 485,000 gallons per day) is inconsistent with the basis of determination set forth in the application (255 families at 200 gallons per family per day, amounting to 51,000 gallons per day gross, or 0.079 cubic foot per second). The applicant's representatives forthwith authorized a reduction of the

amount applied for from 0.75 to 0.079 cubic foot per second. Despite this reduction in the amount applied for, the protestants adhered to their position that there is no unappropriated water in Sweetwater River or in its tributaries and elected to allow their protest to stand. They stated that diversion of 0.079 cubic foot per second probably would not injure them materially but feared that approval of the application would establish a precedent which would lead to other filings, detrimental in the aggregate.

It developed during the investigation that up until around 1945 the applicant's project was served by a 4 inch diameter, gravity line which headed at "Big Springs", the reach of Harbison Canyon (Silver Brook) having standing water, fed by seepage, in the canyon bottom; and from a well offset some 60 feet from the channel. Around 1945, however, the gravity diversion was abandoned, due to objections by sanitation officials, and a second well was drilled. A third well has been partially developed but its completion has been deferred, pending action on the present application. According to information adduced it appears that for more than 5 years prior to the discontinuance of the gravity system in 1945 the applicant's use of water exceeded 0.079 cubic foot per second; and that this use would have so continued had it not been necessary to alter the method of diversion, for sanitary reasons. This matter of past use and possible prescription was not fully brought out until after Messrs. Higgs and Poulter (representing the City of Chula Vista and the California Water and Telephone Company respectively) had departed from the hearing.

The purpose of filing Application 11651 appears to have been to secure recognition of rights believed to have been earlier established,

on the basis either of old appropriations, or of riparian ownership, or of both; and also to facilitate apportioning the limited existing supply as best suits the needs of the community. These needs, within the applicant's project, appear at present to consist of domestic consumption by approximately 200 families and incidental irrigation of 15 acres of gardens and small tracts. As population increases it has been customary to curtail irrigation correspondingly.

As to protestant Neal, whose property lies on Harbison Canyon approximately one mile below the applicant's project, it is not apparent that injury will result from the applicant's diversion. Mrs. Neal's use is reported to average 142 gallons per day. In the past her supply has been ample despite the customary diversions upstream, which the applicant's project will not increase. The shortage which she reports would appear due to drouth rather than to interference by upstream diverters.


Inasmuch as the use contemplated under Application 11651 is substantially identical with that made for a considerable period under color of rights already alleged to exist, and no increase in the amount hitherto diverted is intended, no bar is apparent to the approval of this application, which, in our opinion, should be approved, subject to the usual terms and conditions.

ORDER

Application 11651 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733b of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11651 be approved and that a permit be issued 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 2nd day of Feb. 1948.


State Engineer

