

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 12869 by Don E. Shawver, Sr., Application 13113 by E. F. Manning, Application 13114 by J. M. McKenzie, Application 13115 by C. O. Fedder and Application 13116 by C. A. Davis to Appropriate Water from Escudido Canyon in Los Angeles County for Domestic Purposes.

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Decision A. 12869, 13113, 13114, 13115, 13116 D. 729

Decided January 21, 1952

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APPEARANCES AT HEARING HELD AT LOS ANGELES ON AUGUST 16, 1950 and MARCH 27, 1951:

For the Applicants

Don E. Shawver, Sr.)
E. F. Manning)
C. O. Fedder)
C. A. Davis)
J. M. McKenzie)

Henry B. Lynch, Civil Engineer

In propria persona

For the Protestants

Maris B. Couchois)
George A. Douglas)
Wilmer J. Miller)
Herbert Watson)
Lila Price Wright)
Milan E. Ryan)
Helen V. Rice)
Eugene Cohen)

(Milan E. Ryan and Mark E. O'Leary,
(Attorneys at Law

Mildred Tracy Swanson

In propria persona

Oscar Sagel

In propria persona

EXAMINER - G. EDWIN ZANDER, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works, for A. D. SIMONSTON, State Engineer.

Also Present - J. J. Heacock, Associate Hydraulic Engineer, Division of Water Resources and Donald M. Barratt, an interested party.

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OPINION

General Description of the Projects

The several applications contemplate diversion at the same point, i. e., a dug well, 16 feet deep, situated within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, T15 N18W, R36E4W. The well is already in existence as are also the motor driven pump which serves it and the 2 inch pipe line leading to the tank from which water to the applicants and apparently to several other users, is distributed. The applicants' places of use are lots lying within a tract described in the applications as Tract 8848. The purpose for which the water is wanted is household use and garden watering. Use is to extend year round. The amounts sought under the applications (prior to revision downward, in certain instances, at the hearing) were respectively 2500, 2500, 167, 2500 and 3500 gallons per day.

Protest

A single group protest was filed against the several applications. It bears the following signatures: Lila Price Wright, Maxie H. Conchois, Eugene Cohen, Helen V. Rice, Charles. B. Rice, Milan E. Ryan, Herbert Watson, George A. Douglas, and Wilmer J. Miller. The protest recites in effect that the protestants are all supplied from the well from which the applicants seek to appropriate, that they have drawn on that source for domestic purposes year-round, for varying

continuous periods, since 1926, and that they have used all the water that the well supplies. They assert that the proposed appropriation will injure them in that it will reduce the amount of water available for their use, to the extent that some of them will have no water from this source, at all. The protestants claim prior rights to use water from the source in question on one or more of the following bases: (1) prescription, (2) contract with original tract owner, (3) riparian ownership, and (4) prior appropriation. Protestants Couchois, Rice, Ryan and Wright assert rights on each of these bases, Protestant Cohen claims a right under the 1st and 4th bases, Protestants Douglas and Watson under the 2nd and Protestant Hiller under the 2nd and 3rd. Several of the protestants contend that since the water applied for is neither surface water nor water in a subterranean stream following a known and definite channel, it is not legally subject to appropriation.

ANSWER

The applicants argue that wanton use by protestants of water from the well filed upon has resulted in a lowered water table thereby damaging the applicants' property values, jeopardizing their investments and depleting their only water supply. They assert that they are solely dependent on the well filed upon and that Applicant Shawver's predecessor in interest commenced pumping from that source in 1926. They urge that users located in Latigo Canyon develop the supply there available and desist from further use of Escondido Canyon water. They deny in effect that prescriptive rights have accrued to the protestants. They assert that Protestant Cohen has been placed on the system in the face of a protest by some of the applicants and a promise that no more people would

be so served. They assert that the Couchois property does not receive water from the source in question. They state disbelief in the validity of the claim of Protestants Couchois, Rice, Miller and Ryan to a riparian right, and assert that 4 of the 5 applicants are riparian owners. They contradict the protestants' assertion as to prior appropriation. They represent that it is imperative for the protection of the water resources of Esccondido Canyon that property owners outside of Esccondido Canyon watershed and within Latigo Canyon watershed develop the waters pertaining to the latter and draw their water supply from that source rather than from Esccondido Canyon. They assert that the well upon which they have filed is a shallow, dug well within 10 feet of the stream bed and that it is supplied by surface water. They remark that it is inconsistent for the protestants to contend that water from the well is not subject to appropriation and at the same time claim an appropriative right to that water.

Hearing Held in Accordance with the Water Code

The applications were completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources, and being protested were set for public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code, Title 23, Waters. The hearing commenced on Wednesday, August 16, 1950 at 10:00 o'clock A. M., in Room 707, California State Building, Los Angeles, California and was continued to and completed upon Tuesday, March 27, 1951 in Room 709 of the same building. Of the hearing and its continued session the applicants and the protestants were duly notified.

Motions

At the hearing of August 16, 1950 Attorney O'Leary, on behalf of the protestants, moved that the applications be dismissed, arguing that the applications represent primarily an attempt to have determined a contest of property rights, a matter over which the Division of Water Resources lacks jurisdiction. Whatever the ulterior motive, if any, on the part of the applicants, the latter clearly are privileged to file applications and it is the opinion of this office that the hearing should proceed. Later in the same hearing Attorney O'Leary moved to strike a portion of Witness Lynch's testimony as incompetent, representing the witness' opinion only and insufficiently based upon facts. That motion also is denied, in view of the latitude allowed in applying the rules of evidence, under Section 1353 of the Water Code.

Discussion

At the hearing of August 16, 1950 the parties stipulated to abide by the findings of the Division of Water Resources as to the nature of the source filed upon and the amount of unappropriated water therein, such findings to be based upon a field investigation to be made the following day by personnel of the Division. Pending the availability of information expected as a result of that field investigation the hearing adjourned.

At the hearing of March 27, 1951 the taking of testimony was resumed, the field investigation (as reported in Hearing Items 8 and 9) having indicated that the source is in fact an underground stream and therefore within the jurisdiction of the Division of Water Resources in

the matter at hand. Testimony at that hearing included testimony by Applicant Shawver (pages 21 and 22 of transcript) to the effect that the well filed upon, "during the lowest time in the season that we've ever had", yields between 200 and 300 gallons per hour, continuously. During the course of the hearing Applicants Shawver, Manning and Davis authorized a reduction of the amount applied for by each of them to 1000 gallons per day (pages 29 and 30 of transcript). At the same hearing witness Cohen testified (page 32 of transcript) that he has 52 evergreen trees, between 50 and 75 eucalyptus trees, 150 plants in pots and numerous beds of flowers; that he waters abundantly, and that he utilizes therefor a total of 600 gallons per week, measured volumetrically.

At the hearing of August 16, 1950 the parties stipulated (transcript, pages 43 and 44) to the effect that all of the lot owners of Tract 8848 derive their title from the subdivider of that tract, which title includes, for each lot, a 1/160 interest in the well, pumping plant and equipment on Lot 83, and right of entry into said lot.

At the hearing of March 27, 1951 Applicant Manning testified (transcript, pages 7 to 11) that he uses an estimated amount of 200 gallons a day on his double lot (110 x 220 feet), that he expects to use more, that he applied for 2500 gallons per day with the expectation of being cut down to his actual needs which are as yet unknown. On the same date Applicant Davis testified (transcript, pages 11 to 14) that his purpose in applying for 3500 gallons per day was to be sure to have enough, that his property consists of 3 lots, and that he waters flower and vegetable gardens and shrubbery. Also on March 27, 1951 Applicant Shawver testified that he

has 2 large lots, that he irrigates some 2500 square feet of flowers, and that he plans to irrigate more. On the same occasion Engineer Lynch testified that in his opinion some 1000 cubic feet of water pass the well each day during a 6 year period of subnormal rainfall, that the well is not so constructed as to catch all the water that comes down the canyon and that there is more than enough water in the canyon to supply the moderate needs of all who have built therein.

The question as to whether the source filed upon is a subterranean stream flowing through a known and definite channel was settled in the affirmative by the field investigations of August 17, 1950.

The question as to whether unappropriated water exists within that source and if so how much, is less clear, in the absence of more complete information. The size, configuration and lay of the watershed indicate that unappropriated water probably exists beyond the needs of present users, during and after storms. The applicants and protestants number 5 and 9 respectively, a total of 14, and apparently they all secure and utilize water. That there are other users in the locality is indicated by a statement in the report of the engineer field investigation (Hearing Item 8) to the effect that there are presently about 20 homes on the tracts of which probably half are occupied permanently and the others occupied over week ends. If, say, 18 homes are occupied steadily and each utilizes water at the rate of 200 gallons per day, a common rate of household use at homesites within forest reserves and comparable areas, aggregate use could equal or exceed 3600 gallons per day. If lay witness Shaver's testimony that the well yields from 200 to 300 gallons per hour (equivalent to 4800 to 7200 gallons per day) be credited there would seem to be a

surplus available, even when water is most scarce, of from 1200 to 3600 gallons per day. If unit consumption should materially exceed 200 gallons per day this apparent surplus would of course vanish. It is by no means certain that surpluses exist at the well under discussion in the amounts applied for or even in the amounts to which the applications were reduced during the hearing, if the asserted rights of all of the parties prove valid. Doubt may be entertained as to the validity of the claim of certain users to supply lands beyond the Escondido-Latigo watershed, especially lands within Tract 9289, with Escondido Canyon water. Such use seems to have commenced as a matter of expediency. If based upon any inherent right, such right is not apparent. Insofar as the applicants are already supplied from Escondido Canyon under rights which they already claim, under their deeds, approval of the applications at issue will not increase demands upon that source except to the unknown but probably inconsiderable extent to which the applicants increase their use.

Applicant Fedder's non-attendance at the Hearing on March 27, 1951 and his letter date-stamped March 22, 1951 setting forth his decision not to attend that hearing or to have part in further water discussion or expense, are taken as indicating an abandonment of interest in Application 13115, such as to render the approval of that application unwarranted.

Summary and Conclusion

The evidence indicates that the source filed upon under the above numbered applications is a subterranean stream flowing through a known and definite channel. It indicates further that unappropriated water probably exists in that source, at times, that the amount of such

water cannot be closely estimated from the available data but that that amount probably is enough to satisfy a part if not all of the demands under Applications 12869, 13113, 13114 and 13116, and can be taken and used in the manner proposed by the originators thereof without encroachment upon existing rights. The evidence further indicates that interest in Application 13115 has been abandoned.

It is the opinion of this office for the reasons above stated that Applications 12869, 13113, 13114 and 13116 should be approved subject to the usual terms and conditions and that Application 13115 should be denied.

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ORDER

Applications 12869, 13113, 13114, 13115 and 13116 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 12869, 13113, 13114 and 13116 be approved and that permits be issued to the applicants, subject to such of the usual terms and conditions as may be appropriate.

IT IS FURTHER ORDERED that Application 13115 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 21st day of January 1952.

Original signed by A. D. Edmonston

A. D. Edmonston
State Engineer