

STATE OF CALIFORNIA
PROCEEDINGS BEFORE THE
STATE WATER RIGHTS BOARD

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In the Matter of Application 16523 by United States -
Cleveland National Forest to appropriate from an Unnamed
Spring Tributary via Trabuco Creek, Arroyo Trabuco and
San Juan Creek to Pacific Ocean, in Orange County, for
Domestic and Fire Protection Purposes.

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Decision A 16523 D 864

Decided October 23, 1956

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In Attendance at Investigation Conducted by the State Water
Rights Board on July 5, 1956:

For the Applicant

Joseph K. Munhall	District Forest Ranger
James D. Sleeper	Prevention Patrolman

For Protestant Smith

Isabel Smith	Protestant
Alice Platz	Protestant's daughter

For Protestant Wagner

Carlotta Comer Wagner	Protestant
James E. Cox	Engineer
James A. Love	Mineral Researcher
Dale Balmer	Caretaker

For the State Water Rights Board

J. J. Heacock	Senior Hydraulic Engineer State Water Rights Board
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DIVISION

Substance of the Application

The application initiates an appropriation of 5,000 gallons per day, year-round, from a certain spring in Orange County, for domestic purposes and fire protection. The spring is described as being located within Section 5, T6S R6E, SBB&M, and as being tributary via Trabuco Creek, Arroyo Trabuco and San Juan Creek to Pacific Ocean. Diversion is to be by gravity. The proposed works include a small concrete dam, three feet high by ten feet long, 150 lineal feet of 1½ inch diameter galvanized iron pipe and a 5,000 gallon tank. The water is to be used at public campgrounds with accommodations for 600 transients and at government quarters occupied by four people. The tank storage is for fire protection. The applicant asserts ownership of all lands involved in its project. According to the application, the project has been in operation for over 20 years and the works have now deteriorated and are being partially replaced.

Protests

Isabel Smith protests the application, alleging that diversions thereunder will interfere with her irrigation of 36 acres of 25 year old and 6 acres of 5 year old orange trees, within Sections 11 and 12 of T6S R7E, SBB&M, and will interfere also with domestic use at four residences in the same sections.

She claims both a riparian right to use of waters from Trabuco Creek and a right based upon continuous use for more than five years. She states as to her requirements and supply:

" ... the 36-acre orange grove requires 50" of water continuously from Trabuco Creek until the beginning of the rainy season; the 6-acre orange grove requires 30" of water from Trabuco Creek ten days per month until the rainy season. The supply of water from Trabuco Creek commonly becomes inadequate for this use around August 1st ... and decreases from that time until around October 1st ... when Trabuco Creek is usually dry and there is no water at all for necessary irrigation."

Protestant Smith states further that her protest may be disregarded and dismissed if diversions under the application are limited to diversions during the rainy season when irrigation of orange trees is no longer necessary.

Carlotta Comer Wagner protests that according to her understanding and belief diversions under the proposed appropriation would deprive her, during the dry months, of water for domestic use and fire protection. She claims both a prior appropriative right and a riparian right to waters from the applicant's proposed source, and states that use under her claimed rights commenced in April, 1901. She states further that she diverts at points within Sections 5 and 6 of T6S R6E, S8E2N; and that her protest may be disregarded and dismissed if a satisfactory agreement with the applicant can be made.

Answers

The applicant's answers to the protests are substantially identical. They contain statements to the effect that in 1921 applicant's Lower Trabuco campground, which uses water from the spring currently filed upon, was established; that in 1932 applicant's present water diversion, storage and campground-guard station distribution system was installed; that use of water has been continuous; that the work now proposed is the rehabilitation of the old works; that water diverted by applicant is not diverted from the canyon but continues to Trabuco Creek; that except for needs incidental to increased use of the campground and fire protection use will not exceed what it has been in the past; that it is difficult for applicant to understand how the appropriation now sought can adversely affect the protestants.

Field Investigation

The applicant and the protestants stipulated to the submittal of the application and protests upon the official records and a field investigation was conducted on July 5, 1956 by an engineer of the State Water Rights Board. The applicant and the protestants were present or represented at the investigation.

Records Relied Upon

Applications 6720 and 16523 and all relevant information on file therewith; Santiago Peak, Canada Gobernadora and

San Juan Capistrano quadrangles, United States Geological
Survey.

Information Obtained by Field Investigation

Extracts from "Report of Division of Water Resources
on Application 16523" (filed with that application) are as
follows:

"The data and information contained in this
report have been obtained from ... public records,
from discussion with the parties ... and from
observations made"

"Water is piped to a kitchen sink in the Guard
Station and to outside faucets in the camp grounds.
The 5,000-gallon tank will remain full for fire pro-
tection purposes and overflow from the tank ...
returns to the canyon about 200 feet below the point
of diversion and 400 feet above Trabuco Creek."

"The only active application to appropriate water
from Trabuco Creek is Application 6720 ...; Permit
3842 was issued The permittee started construc-
tion in ... 1955 and completed it in January, 1956.
The intake and a portion of the pipe line are on
ground claimed by Mrs. Wagner as part of her mining
claim and she indicated that proceedings would be
initiated ... to estop the trespass."

"There are numerous riparian and overlying rights
downstream from the proposed diversion that are being
exercised. Many of these owners were advised of the
application but made no protest."

"The unnamed spring is an accretion in the bottom
of a small, narrow ravine that is tributary to Trabuco
Creek from the South. The watershed above the point
of diversion contains about one-quarter square mile of
steep mountain side having a moderately heavy covering
of brush and trees. ... average annual precipitation
over the watershed is about 20 inches, with a wide
variation over a period of years. Flow from the
source at the proposed point of diversion was measured

at four gallons per minute, which District Ranger Munhall stated was about normal for the time of year, but flow will drop about 50 per cent by late summer, and the only time surface flow from the source reaches Trabuco Creek is during and immediately following heavy rainfall."

"Flow in Trabuco Creek was measured downstream from the tributary canyon and upstream from the Wagner point of diversion, at 0.75 cubic foot per second. Diminution of surface flow was apparent about one-quarter (mile) west of the east line of Section 6 and all surface flow disappeared in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, or near the mouth of the restricted canyon."

"... the (mean) estimated seasonal natural runoff, 1894-95 to 1946-47, for Trabuco Creek near San Juan Capistrano ... is 3,300 acre-feet, with maximum of 25,200 acre-feet and several years with zero runoff. This station is over ten miles downstream from the proposed diversion."

"The watershed above Protestant Wagner's point of diversion is about 10.6 square miles, and about 16 square miles above Protestant Smith's lower well, or 42 $\frac{1}{2}$ and 64 times as large as the watershed above the proposed point of diversion."

"Prior to 1930 the Forest Service ... piped the water ... to a small redwood tank above the place of use. The Guard Station and campgrounds were improved and the water has been used practically continuously since that time. A maximum of four persons have been at the station, and use at the campgrounds is increasing rapidly. A count ... on July 4, 1956, showed over 300 campers and picnickers at the grounds."

"The water system has deteriorated to the place that reconstruction is necessary, and the application was filed to establish a valid water right, prior to reconstruction of the system."

"All use under the proposed appropriation will be in Trabuco Canyon, near the Creek."

"Protestant Smith has two wells One well in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, T6S R7W, is 49 feet deep ... and is used for the irrigation of 36 acres of citrus on bench land ... and domestic water for

three houses. The second well is in the NW 1/4 of Section 6, T6S R6W, it is 53 feet deep ... and supplies water for six acres of citrus and domestic water for one house"

"Protestant Smith stated that her protest was a matter of policy and that she was in favor of the development as she did not believe that the small amount of use indicated could materially affect her diversion, and the added storage would be beneficial for added fire protection. She did not desire to withdraw her protest as she was fearful that it might weaken her position in case of future action against other ... users."

"Protestant Wagner has 17 contiguous mining claims lying along both sides of Trabuco Creek, and extending for over one and one-quarter miles along the creek in Sections 5 and 6. Protestant alleges that her claims cover the area occupied by the Guard Station, campgrounds and point of diversion. The claims were first located in 1901 but have never been patented. A mill was constructed on one of the claims that crosses Trabuco Creek, it was alleged to have had a capacity of about 500 tons a day and water was diverted ... to the mill prior to 1913. The machinery was removed about 1942 Prior to 1942 Mr. Charles McKinnis leased the property, ... he filed Application 10475 for 2.50 cubic feet per second for mining purposes, and Permit 6079 was issued The permit was revoked on April 16, 1952, as there had been no progress The property was visited on May 2, 1952, by the writer, and it was found that the only diversion made at that time was only occasionally ... the plant delivering about 1,400 gallons per hour to a 5,000 gallon tank for domestic use and fire protection. That pumping plant is the only present means of diversion, and Mr. Balmer stated that the only use for the past several years was to fill the tank once a year for fire protection purposes, domestic water being hauled in."

"It appears that any prior right the protestant (Wagner) may have had has been lost, or impaired, by non-user, and use under any riparian right has been very small for the past several years."

"(Protestant Wagner) is particularly opposed to having the area open to the public, due to the fire hazard."

"Protestant Wagner's potential use is obscure. It is alleged that there are high mineral values in the claims, but recovery has been very difficult."

"Applicant proposes to make a new survey of the area to determine if the point of diversion and place of use are on the ... mining claims."

Other Information from Office Files

Channel distances, downstream, in miles, from the applicant's proposed point of diversion to protestants' points of diversion, scale approximately as follows:

To Protestant Wagner's point of diversion	0.45
To Protestant Smith's upper well	2.6
To Protestant Smith's lower well	3.5

Application 6720 Permit 3842 represents a year-round appropriation by one Louis Robinson of 0.75 cubic foot per second, from Trabuco Creek, at a point about 0.9 mile below the point of diversion described in Application 16523, for domestic purposes and irrigation. The permit authorizes direct diversions for those purposes of up to 0.75 cubic foot per second from about April 1 to about October 15 of each season and direct diversions throughout the remainder of each year for domestic purposes as necessary. It also authorizes diversions to storage in the amount of 80 acre-feet per annum without limitation as to the time of collection but provides that total diversions under the permit, for all purposes, shall not at one time exceed 0.75 cubic foot per second. According to a memorandum of field

visit on May 5, 1955, filed with Application 6720, there had been no use of water under Permit 3842 up to the time of that visit. Application 6720 Permit 3842 is under current extension, for completion of construction and application of water to beneficial use, to December 1, 1957.

Application 6720 was protested by 20 or more claimants of downstream rights to divert for various purposes including the irrigation of some 1,000 acres. By hearing conducted in the matter of Application 6720 it was determined that there was sufficient unappropriated water in Trabuco Creek to justify approval of that application and Permit 3842 was accordingly issued.

Discussion

Protestant Wagner's current use of water appears to be no more than nominal. According to a statement ascribed by the investigator to protestant's caretaker Balmer, that use amounts only to the occasional filling of a 5000-gallon tank for fire protection. Since the watershed above Protestant Wagner's uppermost claimed point of diversion appears to include some 42½ times the area of watershed above the applicant's proposed point of diversion, that protestant cannot conceivably be affected, under present conditions, by a diversion in the small amount that the applicant seeks to appropriate; and it is an established principle that contemplated use in future under a claimed but unexercised right is an insufficient basis for the denial of an application to appropriate upstream waters.

Protestant Smith's claimed requirements, prior to the beginning of the rainy season, of 50 miner's inches continuously plus 20 miner's inches for ten days of each month are equivalent to a steady flow of 60 miner's inches or some 969,000 gallons per day, an amount which is about 194 times the amount that the applicant seeks to appropriate. From Protestant Smith's assertion that her supply becomes deficient about August 1 it may be inferred that she would not ordinarily be injured by the applicant's proposed diversion before that approximate time, if at all. Protestant Smith reportedly obtains her supply from wells. Recession of the water table at those wells evidently results not only from diminution of supply from upstream but also from natural drainage of the underground basin that supplies them, accelerated by diversions by the many other users served from the same or lower reaches of Trabuco Creek. It is not apparent that the diversion that the applicant proposes, of the order of 1/194 of the amount that Protestant Smith alone claims to be entitled to divert, can affect that protestant appreciably. In view of these circumstances Protestant Smith's objections appear an insufficient bar to approval of Application 16523.

From the inadequacy of the evidence in support of the Wagner and Smith protests and the absence of protests from other known, downstream users, it is apparent that the water issuing from the spring described in Application 16523 is not essential to the satisfaction of asserted rights downstream and that such water, up to the amount sought under that application, is subject to appropriation.

Conclusion

The information indicates that unappropriated water exists in the source from which the applicant seeks to appropriate and that such water may be taken and used beneficially in the manner proposed in the application without injury to the protestants or other users. It is the opinion therefore of the State Water Rights Board that Application 16523 should be approved and that a permit should be issued to the applicant, subject to the usual terms and conditions.

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ORDER

Application 16523 for a permit to appropriate unappropriated water having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been conducted and the State Water Rights Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16523 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento this 23rd day of October, 1956.

/s/ Henry Holsinger
Henry Holsinger, Chairman

/s/ John B. Evans
John B. Evans, Member

/s/ W. P. Rowe
W. P. Rowe, Member