

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

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In the Matter of Application 11578) Sources: Temecula Creek
by Santa Margarita Mutual Water) Santa Margarita River
Company) County: Riverside

Decision No. D 896

Decided: April 10, 1958

Appearances at hearing held at San Diego on August 12, 13, and 14, 1957, by Henry Holsinger, Chairman, State Water Rights Board.

For the Applicant

Santa Margarita Mutual
Water Company

W. B. Dennis, Attorney

For the Protestants

Fallbrook Public Utility
District

Phil D. Swing, Attorney
Franz R. Sachse, Attorney

Vail Company

George Stahlman, Attorney

For Interested Parties

Department of Water Resources,
State of California

Mark C. Nosler, Attorney
Muir Woolley, Attorney

Department of Fish and Game,
State of California

Howard Huddle,
Fisheries Biologist

G. G. Pepple

In pro per

DECISION

Substance of the Application

Application 11578 was filed on October 4, 1946, by Santa Margarita Mutual Water Company (for convenience herein referred to as "Santa Margarita") for a permit to appropriate unappropriated water in the amount of 5,000 acre-feet per annum by storage from Temecula Creek, to be collected year-round, in Vail Reservoir, and 60 cubic feet per second by direct diversion from Santa Margarita River to be diverted between April 1 and November 30 of each year.

Water is to be collected to storage in the reservoir created by existing Vail Dam of the Vail Company located within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 10, T8S, R1W, SBB&M*, said water to be later released from the reservoir and allowed to flow by gravity down the natural channels of Temecula Creek and Santa Margarita River to a point within the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 24, T8S, R3W, where it will be rediverted, together with the proposed direct diversion of the flow of Santa Margarita River for conveyance by pipeline to the place of use.

The water is to be used for irrigation and for incidental domestic purposes within a gross area of 12,600 acres within the applicant's service area in Townships 8, 9, and 10 South, Ranges 2 and 3 West. Irrigation is contemplated on some / 8,000 acres of orchard during an irrigation season extending from April 1 to December 31.

* All township references herein are to San Bernardino Base and Meridian.

Protests

Protests are of record by Fallbrook Public Utility District (for convenience herein referred to as "Fallbrook"), the United States Navy and the Vail Company.

Fallbrook claims a right to the use of water from Santa Margarita River at points downstream from the applicant by virtue of Permit 7033 (Application 11586) and Permit 8511 (Application 11587); that the district has not been able to use the amount of water allowed under Permit 7033, namely, 2.5 cubic feet per second, due to the continued drought over the general area; that with the construction of the storage features required to develop water under Permit 8511 (this permit allows seasonal storage and use of 10,000 acre-feet per annum) and with a return to normal runoff, all of the water allowed under both permits will be put to beneficial use; and that any development under Application 11578 will greatly diminish the quantity of water remaining in Santa Margarita River and will render the supply inadequate to satisfy, in full or substantial part, the district's rights which are required to meet the present and future needs of the lands and inhabitants within its boundaries.

The United States Navy's protest is based upon claim of riparian ownership, and a judgment entered on December 26, 1940, and recorded in San Diego and Riverside counties entitled "Rancho Santa Margarita vs. Vail, et al.", Civil No. 42850, under which the United States Government, as successor in interest of Santa Margarita Ranch, claims 66-2/3 per cent of water of Santa Margarita River. The Navy alleges that approval of the application

will deprive it of water necessary for the maintenance of military installations at Camp Pendleton near Oceanside and the Naval Ammunition Depot near Fallbrook. Under the mentioned judgment, the Navy claims that the two principal parties to the suit and the intervenors were granted control of all rights to the waters of the Santa Margarita River.

The Navy claims that the military activities at Camp Pendleton and the Naval Ammunition Depot are entirely dependent on the water resources contained within the Government reservation boundaries and that there is no water company adjacent to Camp Pendleton capable of supplying sufficient water to meet the whole or any substantial part of its needs, that the water needs for the Naval Ammunition Depot are obtained from the surface flows of the Santa Margarita River and the needs for Camp Pendleton area are obtained from wells dispersed throughout the Santa Margarita River basins; that these basins extend in an interconnected form approximately ten miles upstream from the mouth of the river.

The Navy states that until flash floods in the Santa Margarita basin are controlled and regulated by a water conservation and flood control program, the United States must contest applications proposing the appropriation of the waters of the Santa Margarita River since such appropriations will imperil the mission of Camp Pendleton as a military base resulting in the permanent devaluation of Federal lands either for military or agricultural use.

Vail Company claims that there is no water in the Santa Margarita River stream system subject to appropriation; that the

Vail Company owns all of the property where the applicant proposes to divert; that the company does not contemplate making any agreements for use of its lands; that the applicant's proposed diversions will interfere with the operation of Vail Dam and other irrigation works of the company; that the applicant lacks both legal and financial ability to execute its proposed plan to make diversions and to put the water to beneficial use; that the applicant has not prosecuted its application with reasonable diligence; and that approval of Application 11578 would not best conserve in the public interest the waters sought to be appropriated but to the contrary would be against public policy and to the legitimate interests of all others who have rights on the stream.

Rights claimed by Vail Company are based upon riparian ownership and appropriative rights, including Permit 7032 (Application 11518). As to its past and present uses of water the Vail Company asserts that for more than 50 years it and its predecessors in interest have diverted in excess of 5,000 acre-feet annually from the Santa Margarita River stream system for domestic purposes and the irrigation of 3,000 acres.

Answers to Protests

In answer to the protest of Fallbrook the applicant claims that Fallbrook has for some years past been diverting a small amount of water from Santa Margarita River under agreement with the Santa Margarita Ranch (now Camp Pendleton). The applicant states that the agreement with the ranch was entered into subsequent to the effective date of the Water Commission Act (now the Water Code) "but, in spite of the fact that a filing with

the State is a prerequisite of a valid appropriative right, Fallbrook did not file an application until 1946 when the District filed its Application 11586" which carries a later priority than the subject application.

No answer to the protest of the United States Navy is of record.

In answer to the protest of Vail Company the applicant alleges that the records of discharge of Santa Margarita River show there is a great deal of "public water" in the river wasting into the Pacific Ocean; that the applicant expects to make suitable financial arrangements with the Vail Company which will compensate it for any deprivation caused by its occupancy of Vail property; that the applicant has the financial ability to consummate the project proposed and will acquire the legal ability to do so; and that the applicant has prosecuted its application with diligence.

Hearing

Application 11578 was set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, before the State Water Rights Board on Monday, August 12, 1957, in Municipal Court, County Court House, San Diego, California. The hearing extended through August 13 and 14, 1957. Application 11578 was consolidated for hearing with Applications 12152, 12178, 12179, and 12576. These four latter applications will be considered in separate decisions and orders.

The Watershed

Santa Margarita River is formed by the junction of Murrieta Creek and Temecula Creek at the head of a narrow, precipitous, 5-mile canyon (Temecula Canyon) about 2 miles southeast of the Town of Temecula in Riverside County. The river flows in a general southwesterly direction through portions of Riverside and San Diego Counties for a distance of about 30 river miles where it empties into the Pacific Ocean about 4 miles northwest of the City of Oceanside. The drainage area comprises 742 square miles bounded by the watersheds of the San Jacinto River on the north, the San Luis Rey River on the south, and the Colorado River Basin on the east. On the west the watershed adjoins the drainage area of San Mateo, San Onofre, and Las Pulgas Creeks which flow directly to the ocean.

The Vail Project

Permit 7032 (Application 11518)

Permit 7032 (SWRB Exh. 2) of Vail Company allows an appropriation of 40,000 acre-feet per annum from Temecula Creek for irrigation and domestic purposes. The water is to be stored at Vail Reservoir (estimated capacity of 41,140 acre-feet), and later applied to beneficial use. The period of collection to storage is from about November 1 of each year to ^{about} April 30 of the succeeding year. The place of use is 3,797 acres in Pauba Basin in T8S, R1, 2, and 3W.

Method of Operation

Under the usual method of operation water is released through Vail Dam into the channel of Temecula Creek. A spurling meter measures the total release at that point (R.T. p. 224). From Vail Dam the water courses down the natural channel of Temecula Creek a distance of about 1.5 miles to a point just above the mouth of Nigger Canyon at the upstream end of Pauba Basin (R.T. p. 223; also supporting map, Application 11518, SWRB Exh. 2, and Plate 21 B, SWRB Exh. 6), where it is diverted into a 24-inch pipeline (R.T. p. 225). The quantity of flow diverted to the pipeline is estimated from weir measurements (R.T. p. 224). Water is conveyed by pipeline as far west as the Temecula Cemetery, or a straight line distance of about 9 miles from the pipeline intake (R.T. p. 225). A branch line also conveys water into the Pechanga Creek watershed to the southern boundary of Vail Company lands (R.T. p. 225). Under this arrangement, or a slight alteration thereof, the entire place of use under Permit 7032 is physically susceptible of irrigation (supporting map, Permit 7032, SWRB Exh. 2). The pipeline supply is supplemented by pumping from wells at numerous points in Pauba Basin. The Pauba ground-water basin is recharged from precipitation and stream flows originating downstream from Vail Reservoir, as well as releases from Vail Reservoir (R.T. p. 226). Ground-water recharge in Pauba Basin from Vail Reservoir releases occurs (1) by channel percolation losses in Temecula Creek between Vail Dam and the pipeline intake, and (2) by recharge from the percolation of applied irrigation water (R.T. p. 226).

Vail Company's irrigation operations in Pauba Basin are limited by that company's recognition of the 1940 stipulated judgment in Rancho Santa Margarita v. Vail (Superior Court, San Diego County). The judgment requires, among other things, that a minimum flow of 3 cubic feet per second be maintained by Vail Company at the head of Temecula Canyon from May 1 through October 31 of each year (R.T. p. 244; and see stipulated judgment). The head of Temecula Canyon is about 9.5 miles downstream from Vail Dam. Return flow from applied irrigation water in the Pauba Valley is normally sufficient to maintain the required flow (R.T. p. 233). Ground water from the Pauba Basin rises to the surface near the head of Temecula Canyon and is available to satisfy the requirements of the judgment (R.T. p. 332). In rare instances the combined surface and ground-water flow at the head of Temecula Canyon is insufficient to maintain the flow of 3 cubic feet per second, in which event water is pumped from the "Navy" well for the purpose of conforming to the requirements of the judgment. The "Navy" well is located about 8 miles westerly of and downstream from the Vail Dam, and about 1.5 miles upstream from the head of Temecula Canyon (R.T. p. 233; and also Bulletin 57, Vol. II, Appendix F, p. 55, "Navy" well equals Well No. 8S 2W 17M1).

Water Supply and Water Requirements

Witness for Vail Company testified that (R.T. page 200) according to a land classification survey there are 3,500 acres of irrigable land within the place of use under Permit 7032; that

a re-evaluation of the survey would show an increase in this figure; and that under full development 9,500 acre-feet of water will be required annually for the irrigation of these lands.

The United States Geological Survey has maintained a stream-gaging station on Temecula Creek at or near Vail Dam site since 1923, and records of flow are contained in the Water Supply Papers of that agency (SWRB Exh. 7) under the heading "Temecula Creek at Nigger Canyon".* During the period of published record, annual gaged runoff has varied from a maximum of 40,500 acre-feet during water year 1926-27 to a minimum of 1,470 acre-feet during water year 1950-51. Mean and median runoff for the period was 9,380 and 5,310 acre feet per year, respectively.

The long-term annual safe yield of the reservoir is 6,800 acre-feet as estimated by the former State Division of Water Resources (SWRB Exh. 6) and 7,100 acre-feet as estimated by Vail Company (Vail Exh. 2).

It appearing from the evidence that under full development, 9,500 acre-feet of water will be required annually to irrigate lands included within the place of use under Permit 7032 of Vail Company, and it further appearing that Vail Reservoir will provide a safe annual yield of only about 7,000 acre-feet, there will be a deficiency in supply of some 2,500 acre-feet per annum insofar as that source is concerned.

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* Subsequent to 1952, records of this station are published as "Temecula Creek at Vail Dam, near Temecula, California".

Applicant argues (R.T. pp. 23, 24):

"...We are not making any claim as against any water that the Vails can use on the land for which they asked and secured a permit or for purposes that they requested or applied for and for which the permit was granted. We feel that there are waters that will be stored in the Vail Reservoir that cannot be used on the lands for which the waters were appropriated and cannot be put to the use for the purposes for which the application was made, and the permit granted.

"We feel that it is possible that a large amount of that water as in the past and may in the future be released so that the water can go downstream to meet the terms of the stipulated judgment between the O'Neills which is now the Navy and the Vails and as to those waters we feel that our application would attach..."

The argument has no merit insofar as it relates to unappropriated water at Vail Dam. It is true that return flows from water stored in Vail Reservoir arriving at the head of Temecula Canyon may be available for the satisfaction of the stipulated judgment. However, there is no showing that the Vail Company does or intends to release water from Vail Reservoir for the purpose of meeting the requirements of the stipulated judgment without first applying such water to beneficial use in the irrigation of lands within the place of use under Permit 7032. It follows that there is no water at the Vail Dam which is subject to appropriation by applicant.

Ability of Applicant to Proceed

There is a further compelling reason for denial of the application, including that portion previously described which seeks permission to appropriate 60 cubic feet per second by direct diversion at a point on Vail Company land downstream from the Vail

Dam. The testimony strongly indicates that applicant has neither the ability nor intent to proceed promptly and with due diligence to appropriate water for beneficial use in the manner proposed in its application.

The estimated cost of the diversion dam and 16,130 feet of main conduit is stated in the application to be \$300,000. The estimated cost of "share in (Vail) Reservoir" is stated to be \$200,000. Both cost estimates cited are as of 1951. No evidence of the total cost of the project was offered.

Concerning the financial ability of the company to construct its proposed project, Mr. Richard Yarnell, Secretary-Treasurer and a director of the company, testified (R.T. p. 255) that the company has 120 or 125 stockholders; that the company has issued about 1,929 shares of stock; that about 505 of those shares were issued at a nominal price of \$10 in cancellation of indebtedness; that (R.T. p. 256) the total cash received by the company from sale of its stock has amounted to some \$14,000; that (R.T. p. 256) according to his understanding the permit issued by the Corporation Commission of the State of California limited the issuance of stock of the company to \$24,000 worth or 2,400 shares at \$10 per share; that the shares were held in escrow; that (R.T. p. 257) the present bank account of the company is \$2,240; that all of the shares that have been issued so far have been paid for in full; that the shares are not assessable to his knowledge; that to the best of his knowledge the company has no power to assess its stockholders; that the company owns no land; that it owns no pumps, pipes, reservoirs, or tanks; that it owns no water;

that it has served no consumers; that (R.T. p. 258) it has never served water to anyone; and that (R.T. p. 262) no arrangements have been made for financing a project of this type.

Mr. Dennis testified (R.T. p. 188) that the stock is assessable.

Concerning the ability of the company to secure the necessary lands, easements, and rights of way, Mr. Yarnell testified that (R.T. pp. 270-271) the company has never obtained permission from the Vail Company to have access to any waters under the application.

According to the application, the company would rely upon the power of eminent domain to secure the lands required for its use. No estimate of the cost thereof or of the means whereby the purchases would be financed was presented by the company. Counsel stated (R.T. p. 355) that authorities in support of the power of the company to condemn property for its purposes would be submitted in briefs to the Board. Briefs citing these authorities have not been submitted nor have any briefs been filed by applicant company in these proceedings.

It has been held that service of water by a mutual water company to its stockholders is a private use (Pasadena v. Alhambra, 33 Cal.2d 908, citing Stratton v. Railroad Commission, 186 Cal. 119). The evidence (Application 11578) shows that lands covering the proposed diversion site are owned by Vail Company.

There is no evidence concerning plans that have been prepared by the company for prompt and diligent construction of the diversion facilities described in its application and for

distribution of water throughout its proposed service area. Mr. Yarnell (R.T. pp. 261, 262) disclaimed knowledge of such matters and no other witness testified concerning them. No description of the means that would be employed to distribute water throughout the service area was presented, either in the application or at the hearing. The application as first filed included an area of approximately 3,000 acres which subsequently was included within Fallbrook District. The lands owned by all but two of the original incorporators of the company were within this area, and consequently they "dropped out" (R.T. pp. 254-265). An amended application filed in 1951 excluded the aforesaid lands within Fallbrook District and added certain other lands to the proposed service area of the company. No direct evidence was produced concerning the desire of any landowner within the amended service area to take water from the company, the conditions under which water would be supplied, or that water could be supplied to potential users at a price they could afford to pay.

Mr. Dennis testified (R.T. p. 184) that all of the service area of the company and the area described as the place of use under Application 11578 is located within the boundaries of Rainbow Municipal Water District excepting the area in Riverside County; that Rainbow is serving Colorado River water primarily on a wholesale basis, but also on a retail basis, and that (R.T. pp. 184 and 190) Bonsall Heights Water District and Vallecitos, Yucca, Cononita, Morro, and San Luis Rey Heights Mutual Water Company retail water to consumers within the boundaries of Rainbow and within the place of use under

Application 11578. The map filed in support of Application 11578 (SWRB Exh. 1) indicates that the area referred to in Riverside County comprises about 500 acres.

The relationship between Santa Margarita and Rainbow has not been clarified. The record shows that certain of the former directors of Santa Margarita are now directors of Rainbow (R.T. pp. 264, 265). Rainbow has filed an action in the Superior Court of San Diego County to condemn all of the water rights owned by Santa Margarita, including its applications to appropriate water of the Santa Margarita River and all rights that may be acquired thereunder (SWRB Exh. 2). Rainbow made no appearance in these proceedings before the Board, and no evidence was offered concerning the purpose or intent of Rainbow to consummate an appropriation of water pursuant to any permit that might be issued on the applications of Santa Margarita in the event Rainbow should acquire ownership of said applications or permits. No showing was made that Santa Margarita has contested or intends to contest the condemnation action.

Conclusions

The evidence indicates and the Board finds that unappropriated water does not exist in Vail Reservoir (Temecula Creek) and that Santa Margarita Mutual Water Company does not have the ability to proceed promptly and diligently to perfect the appropriations proposed in its Application 11578 (See Section 778 of California Administrative Code, Title 23, Waters). The plans of the Company for developing a water supply and distribution

system are highly speculative and uncertain. In fact, no plans for actual distribution of water have been presented, and there is no reasonable assurance that issuance of permit would be followed by beneficial use of water. In the judgment of the Board, the appropriation proposed by Santa Margarita would not best conserve the public interest, and therefore, under authority of Water Code Section 1255, its application must be rejected.

ORDER

Application 11578 for a permit to appropriate unappropriated water having been filed with the former Division of Water Resources, protests having been filed, jurisdiction of the administration of water rights, including the subject application, having been subsequently transferred to the State Water Rights Board, a public hearing having been held by the Board, and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 11578 be, and the same is, hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this 10th day of April, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ Ralph J. McGill

Ralph J. McGill, Member

W. P. Rowe, Member, State Water Rights Board, having voluntarily for good cause disqualified himself in these proceedings, did not participate in the decision.

