

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

oOo

In the Matter of Application 4468 of C. F. and Julia S. Martin to  
Appropriate Water from Cold Creek sometimes known as the East  
Fork of Gold Creek, Tributary to the Santa Ana River in San  
Bernardino County for Domestic Purposes and Application  
4791 of George L. Chapman to Appropriate Water from  
an Unnamed Spring Tributary of the Santa Ana River  
Through Lost Creek in San Bernardino County for  
Domestic Purposes.

oOo

DECISION NO. A 4468 - 4791 D 141

Decided March 1, 1927

oOo

APPEARANCES AT HEARINGS HELD April 28th and September 29, 1926.

FOR APPLICANT:

C. F. and Julia S. Martin

George L. Chapman

Swing & Wilson  
by Fred A. Wilson  
James L. Allen

FOR PROTESTANT:

Southern California Edison Company  
Bear Valley Mutual Water Company

Geo. E. Trowbridge  
Henry Goodcell

oOo

EXAMINER: Harold Conkling, Hydraulic Engineer, Division of Water Rights

oOo

O P I N I O N

Under Application 4468 filed February 19, 1926, by C. F. and Julia  
S. Martin it was proposed to divert 0.06 cubic foot per second from Gold Creek,  
sometimes known as the East Fork of Gold Creek, tributary of the Santa Ana  
River from May 1st to December 1st of each year for irrigation and domestic  
purposes within the E<sub>1</sub> of Section 28, T 1 N, R 1 W, S.B.M. but at the request  
of the applicant at the time of hearing held on September 29, 1926, it was  
afterward amended by striking out the irrigation feature of the application,

it being understood that the domestic use would include such use as might be incidental to the maintenance of small gardens upon the cabin sites. The application was protested by the Southern California Edison Company and the Bear Valley Mutual Water Company.

Under Application 4791 filed October 1, 1925, George S. Chapman proposes to divert 0.001 cubic feet per second from an unnamed spring, tributary of the Santa Ana River through Lost Creek from May 1st to October 15th of each year for domestic use on Lot No. 33 of the Lost Creek Recreational Tract of the United States Forest Service. The application was protested by the Bear Valley Mutual Water Company.

The two applications were completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Rights and being protested Application 4468 was set for a public hearing at the law library of the court house San Bernardino at 10:00 o'clock a.m. on April 28, 1926 but at the request of the interested parties was continued to September 29, 1926 at 10:00 o'clock a.m. in the Council Chamber of the City Hall, San Bernardino where a hearing was held in conjunction with Application 4791, these two applications having a common protestant. Of these hearings applicants and protestants were duly notified.

The Southern California Edison Company alleges in effect that from a date prior to 1913 the protestant company has continuously used the waters of the Santa Ana River, to which the source of the proposed appropriation under Application 4468 is tributary, in the operation of its power plants, to the extent of 78 cubic feet per second in Plant No. 1, 71 cubic feet per second in Plant No. 2 and 84 cubic feet per second in Plant No. 3 whenever these amounts were available in the river at the respective intakes of the said plants and for more than ten years last past has used in said plants all of the flow of said river whenever the flow was less than the said

amounts at the respective intakes and that there is no water in the Santa Ana River or any of its tributaries above the intake to Plant No. 3 that is subject to appropriation as against the rights of the protestant except when the flow of said river at the intake to Plant No. 1 is in excess of 78 cubic feet per second.

Protestant claims the right to the use of the waters of Santa Ana River by virtue of appropriations made under dates of December 28, 1896, December 14, 1896 and August 14, 1898 for the respective power plants and by virtue of its ownership to certain lands riparian to the Santa Ana River.

The Bear Valley Mutual Water Company alleges in effect that it has the right to divert all of the water of the Santa Ana River, under an appropriation initiated in 1864 and that during the irrigation season which is from May 1st to December 1st the flow of the Santa Ana River is never sufficient for its needs and has to be augmented by drawing upon the stored waters in the Bear Valley Reservoir.

The Santa Ana River is the largest of the three important streams that traverse the valley of Southern California. It rises in the heart of the San Bernardino Mountains about 30 miles east of Highland and flows westward for about 25 miles to the mouth of its upper canyon; thence southwestward across San Bernardino Valley through the lower canyon in the Santa Ana Mountains and across the coastal plain to the Pacific Ocean at Newport Beach. Its principal tributaries are Bear, Alder, Mill, Lytle and Chino Creeks.

Irrigation in the valleys of the Santa Ana basin has attained a very high state of development and probably no other stream of its size in the United States is made to serve greater or more varied uses. A portion of the flow is regulated by artificial storage in the upper part of the basin and the water passes successively through three hydro-electric plants of the Southern California Edison Company before reaching the mouth of the can-

yon. On leaving the lower plant it is turned into the high level canals of the Bear Valley Mutual Water Company and used for municipal supply and irrigation about Redlands, Mentone, Grafton, Bryn Mawr and Highland. The irrigation water that escapes through seepage to the body of ground water is recovered from springs, flowing wells and pumped wells and is used for irrigation in the vicinity of San Bernardino and Riverside, the power for pumping purposes being generated on the upper reaches of the stream.

The flow of the river decreases from May to November and is quite regular with the exception of the storm periods.

Cold Creek the source of proposed diversion under Application 4468 is a small tributary of the Santa Ana River situate about 13 miles northeasterly of the City of San Bernardino in the San Bernardino National Forest. The main creek is about three quarters or one mile in length dividing into two branches which are each about one-half mile long.

The diversion point of the applicant is located on the East Fork of Cold Creek about one-third of a mile above the junction of the two branches. The bed of the Creek between the proposed point of diversion and its junction with the Santa Ana River is very rocky and precipitous and is well shaded with large trees, consisting largely of pines and firs. The stream is fed by springs located in tributary ravines and in the bottom of the main canyon, the principal ones being located in the lower one-half mile of the creek.

The flow in the stream is on the surface of the stream bed and throughout the entire year a surface connection is maintained between the proposed point of diversion and the Santa Ana River.

Power Plant No. 1 of the Southern California Edison Company constructed in 1898 is located at the junction of the Santa Ana River and Bear Creek about 2 3/4 miles below the junction of the Santa Ana River and Cold

Creek. The water is picked up at the tail race of this power plant and is conveyed by conduits, consisting of flumes, pipe lines and tunnels to Power Plant No. 2 which was constructed in 1905 where it is passed through that plant and conveyed by conduit to Power Plant No. 3, constructed in 1904. After passing through Power Plant No. 3 the water is again picked up and conveyed by flume almost to the intake of the Bear Valley Mutual Water Company.

The evidence presented at the hearing to the effect that the entire summer flow of the Santa Ana River was passed through these power plants remained undisputed and any water which is diverted from Cold Creek would appear to decrease the amount passed through the Power Plants by the amount diverted.

With the exception of a diversion from Alder Creek at the Green Spot intake the Bear Valley Mutual Water Company diverts all of its water at the mouth of the main canyon of the Santa Ana River just below Power Plant No. 3 of the Southern California Edison Company, through three canals which have an aggregate capacity of approximately 116 cubic feet per second.

To augment the deficient summer flow of the stream, the Bear Valley Mutual Water Company stores the flood waters of Bear Creek in the Bear Valley Reservoir and releases the same during the irrigation season. The reservoir was constructed some time prior to the year 1896 but proving insufficient was enlarged in 1910-11 by the construction of a new dam which almost doubled its capacity to 72,000 acre feet. Although the old reservoir was emptied four times the new reservoir has never been empty, the Company aiming always to leave water in the reservoir for an emergency supply in case of deficient rainfall, it being the policy of the Company to carry over from season to season enough water to make a certain delivery even though the coming season

should be dry. To this end there has been a reserve in the reservoir, varying from a minimum of 6,710 acre feet in 1913 to a maximum of 65,608 acre feet in 1922.

Testimony was presented at the hearing that the users of water for irrigation purposes under the Bear Valley Mutual Water Company's system were limited in their supply in order to make a hold-over supply available, and that if a full delivery of water were made through the Company's canals there would be years during which the lake would be emptied and no more water would be delivered than would reasonably be needed for beneficial use on the irrigated lands and to satisfy the prior rights on the stream above the Company's intake which amounts to approximately 20 second feet.

From the testimony presented at the hearing there appears to have been a movement initiated about four years ago by the Tri-County Flood Control, the three counties interested being San Bernardino, Orange and Riverside, to conserve the waters of the Santa Ana River and its tributaries by diverting and spreading the flood waters. This work has been conducted for the most part east of the junction of Cold Creek with the Santa Ana River in the territory commonly known as Barton Flat. The project is financed from general funds of the three counties and paid for by general taxation and private subscriptions.

As a result of the work accomplished by this organization the surface flow of the Santa Ana River at the intake of the Bear Valley Mutual Water Company appears to have been increased somewhat during the summer months, the increase being particularly noticeable in the flow of Barton, Hathaway and Glass Creeks. The Bear Valley Mutual Water Company has contributed about \$3,000 towards this work during the past three years and the work has proved to be so beneficial to them that this company will probably still further contribute thereto.

The applicant claims that the right to store water is determined by the beneficial use to which the water is applied and that therefore the Bear Valley Mutual Water Company has no right to hold water in its reservoir to be drawn upon only when needed by the Company.

The applicants also claim that since the quantity of water stored has been increased by virtue of the fact that the natural flow of the river has been augmented by conservation measures, then to the extent of the increase of stored water made possible by the augmented summer flow, the additional amount stored is not devoted to beneficial use but is rather held in the reservoir until necessity demands that it be used and is therefore unappropriated.

The applicants also maintain that the evaporation from the excess storage is greater than the small amount of water which they seek to appropriate.

This office cannot see where the above matter enters into the controversy at all as it has nothing to do with the question of unappropriated water in Cold Creek. The evidence was entirely clear that all of the water of Cold Creek except that lost by evaporation in transit is appropriated by the two protestants during the season of diversion sought under these applications.

It is not incumbent upon this office to demand that an appropriator should relinquish a certain portion of the water which has been continuously appropriated over a long period of time to another party seeking an appropriation, just because the supply of the prior appropriator by virtue of conservation measures has been augmented, especially when the uncontradicted evidence indicates that the entire normal summer flow of the Santa Ana River has not been increased over and above an amount which this appropriator can put to beneficial use under its existing rights.

The applicants contend that the transportation and use of water beyond the watershed in Moreno Valley discloses an abundant quantity of unappropriated water far in excess of the amount applied for.

In this connection it may be said that water once acquired by appropriation may be used at any place regardless of watershed boundaries but as a matter of fact the evidence presented at the hearing indicated that no water had been transported by the Bear Valley Mutual Water Company to Moreno but is transported by the Crafton Water Company which in turn makes up the deficiency in its supply from the Bear Valley Mutual Water Company. This office cannot see that this has any bearing whatsoever on the question of unappropriated water in Cold Creek.

The applicants attempted to show that if the water was diverted to the place of use named in the application that a portion of it would return to the Santa Ana River.

Only about 40 acres of the land in the E $\frac{1}{2}$  of Section 28, according to the testimony presented are in the watershed tributary to the intake of the protestants the remaining area being within the watershed of Mill Creek which is tributary to the Santa Ana River below the points of diversion of the protestants. For this reason the applicants appear to be willing that if the Division of Water Rights should determine that the protestants had any valid ground upon which they could object to the use of the water upon any part of the applicants' land lying in the Mill Creek watershed, applicants, upon such being indicated, would be willing to amend their application so as to permit of the use of the water upon that portion of the E $\frac{1}{2}$  of Section 28 lying wholly within the Santa Ana watershed.

Even if the use of water would be confined to the 40 acres within the watershed of the Santa Ana River it is believed that nearly all if not the entire amount of water which it is proposed to divert would be dissipated by evaporation and transportation before it would reach the Santa Ana River as the place of use is about a mile distant from the stream bed.



White it is true that the amount of water which the applicant to divert is small yet it would appear that the proposed diversion if applied would deprive the protestants of water in the amount of nearly the same appropriation and testimony presented at the hearing indicated that users for irrigation purposes were paying for water at the rate of \$2000 per acre inch (measured under a four inch pressure) and that the market value of water which the applicant proposes to divert is approximately \$6,000. (67 transcript).

It is the opinion of this office that there is no unappropriated water as defined under Section 11 of the Water Commission Act in Cold Creek therefore Application 4468 should be denied.

Lost Creek to which the waters of the spring which Dr. Chapman seeks appropriate under Application 4791 are tributary is a direct tributary of the Ana River on the south side about 12 miles easterly above the junction of the Ana River and Bear Creek. It is about four miles long and drains an area of about 3 1/2 square miles in the vicinity of Fisher Mountain. Testimony presented at the hearing indicated that the flow in Lost Creek is periodic and steadily increases throughout its length being fed by springs in the stream and from waters from the side canyons and gravels adjacent to it.

Dr. Geo. L. Chapman is the lessor of Lot 33 of the Lost Creek leases in Bernardino National Forest. He obtained his lease about three years ago and built a cabin which is occupied from about May 1st to November 1st of each year.

Heretofore Dr. Chapman obtained his water supply for domestic purposes from the water directly out of Lost Creek but the supply has been considered by the health authorities of Orange County and for this reason had to be diverted here for water.

Mr. Chapman testified at the hearing that he had noticed a small collection of leaves which were dry on the surface in a small draw about 75 feet from Lost Creek and after removing the leaves found a small moist area. After digging down a distance of a couple of feet a small amount of seepage water collected in the hole and he then proceeded to develop a supply under the direction of the District Forest Ranger. An excavation was made about 3½ feet deep, 3 feet wide and 8 feet long and a concrete wall was constructed which extended down to the gravel strata below intercepting a flow of about one gallon a minute, a portion of which was piped to his cabin on the opposite side of the Creek for his domestic use through a tap in the kitchen and an outside faucet. From the spring there is now a continuous surface flow to the creek. Mr. Chapman stated that almost all of the water used would flow back into the stream as his cabin was located only a distance of about 25 feet from the creek.

From the testimony presented at the hearing by Mr. Geo. S. Hinckley who made an examination of the spring and creek it would appear that the excavation made by the applicant intercepts the water from the side draw just above its entrance to the stream, a few feet under the surface and the overflow from the spring developed by the applicant is caused by the intercepting and bringing to the surface water which if left unmolested would pass a few feet through the gravels below the surface of the ground and thence into the waters of Lost Creek. The testimony presented also indicates that the gravels through which the water travels are coarse and would appear to be along an old stream bed of the river rather than in a well defined channel of its own and that all of this underflow is tributary to the Santa Ana River above the intake of the Bear Valley Mutual Water Company.

The applicant stated that there had been a considerable growth of alders and other trees along both sides of the draw extending for a distance

of 100 feet or so, but that some of these trees had been removed thereby decreasing somewhat the transpiration losses. This saving would appear to be offset somewhat by the bringing of the water to the surface subjecting it to a greater evaporation loss.

From the above it would appear that the water which the applicant seeks to divert is water which in the past has gone to make up the summer flow of Santa Ana River and that there is not enough water at the proposed point of diversion to justify the approval of the application. It should therefore be denied.

O R D E R

Applications 4468 and 4791 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, public hearings having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that the said application be rejected and cancelled upon the records of this office.

Dated at Sacramento, California, this first day of March, 1927.

\_\_\_\_\_  
(Edward Hyatt, Jr.)  
CHIEF OF DIVISION OF WATER RIGHTS

WRS:MP