

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

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IN THE MATTER OF APPLICATION 5435 OF J. W. MAKK TO
APPROPRIATE WATER FROM FOUR UNNAMED SPRINGS,
TRIBUTARIES OF SAN FRANCISQUITO CANYON,
IN LOS ANGELES COUNTY.

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Decision A 5435. D 200

Decided July 13, 1928

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APPEARANCES AT HEARING HELD APRIL 30, 1928.

For Applicant

J. W. Makk

in propria persona

For Protestants

Fillmore Irrigation District

no appearance

Sespe Land and Water Company

no appearance

La Joya Lodge Corporation

no appearance

EXAMINER:

Harold Conkling, Chief of the Division of Water Rights, Department
of Public Works, State of California.

O P I N I O N

Application 5435 was filed on April 28, 1927. It proposes an appropriation of 0.039 cubic foot per second throughout the entire year from four unnamed springs in the watershed of San Francisquito Creek in Los Angeles County for irrigation and domestic use on 20 acres of land situate in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 7, T 6 N, R 14 W, S. B. B. and M. The four springs are located within the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 7, T 6 N, R 14 W, S. B. B. and M. The application was protested by the Fillmore Irrigation Company, the Sespe Land and Water Company and the La Joya Lodge Corporation.

PROTESTS

The Fillmore Irrigation Company claims that it has been and is now using water from wells supplied from the waters of the Santa Clara River, said wells being located in Section 7, T 4 N, R 19 W, S. B. B. and M. and alleges in effect that the proposed application would interfere with their prior vested rights inasmuch as all the waters of San Francisquito Creek are appropriated except extraordinary storm waters which are wasted into the sea.

The Sespe Land and Water Company claims prior vested rights by virtue of riparian ownership, usage and purchase and alleges in effect that during the irrigation season of each year all of the waters that flow at the proposed point of diversion are used on protestant's land and that the approval of the application would result in depriving it of the necessary water for irrigation and domestic purposes by decreasing the surface and underground flow at its point of diversion which is located at about the center of the NW $\frac{1}{4}$ of Section 33, T 4 N, R 19 W, S. B. B. and M.

La Joya Lodge Corporation claims riparian rights and appropriative rights to the use of water in the San Francisquito Creek watershed and alleges

in effect that the waters from the springs from which the applicant seeks to divert if undisturbed would return to the ground and by infiltration flow to the points where water is now being diverted by the protestant and that if the application were approved it would result in interference with its rights by causing a diminution of the flow of water at its points of diversion.

HEARING HELD IN ACCORDANCE WITH SECTION 16 OF THE WATER COMMISSION
ACT.

The application was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights and being protested was set for a public hearing in accordance with Section 16 of the Water Commission Act at Room 1026 Sun Finance Building, Los Angeles, at 9:30 o'clock A. M. on April 30, 1928. Of this hearing applicant and protestants were duly notified. No appearance was made at the hearing on behalf of the protestants.

DISCUSSION OF PROTESTS.

Applicant presented testimony at the hearing to the effect that he had used water from the springs since 1913; that the springs were located a distance of at least two miles from San Francisquito Creek; that in their natural condition there was no surface flow from them, and that he had expended approximately \$4,000 in developing his water system.

Under application 2496, permit 1335, La Joya Lodge Corporation has the right to divert water from San Francisquito Creek at a point in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 12, T 6 N, R 15 W., S. B. M., but it would appear from testimony presented at the hearing that no injury to the protestant could be possible as the water from the applicant's proposed point of diversion does not flow into San Francisquito Creek.

Other applications have been filed by La Joya Lodge Corporation, namely, Applications 4523, 4668 and 4886 to appropriate from springs in that vicinity, but from our inspection of the Elizabeth Lake Quadrangle of the United States Geological Survey it would appear that the applicant's proposed diversion can in no way interfere with the diversions of the protestant as there is no connection between the sources.

As there appears to be no flow from the applicant's proposed source of diversion into San Francisquito Creek the protests of the Fillmore Irrigation Company and the Sespe Land and Water Co., may be dismissed, as these companies divert at points in the Santa Clara Watershed more than thirty miles below the applicant's proposed source of diversion.

No testimony was presented at the hearing in behalf of the protestants and therefore the action of this office must of necessity be based upon the testimony of the applicant and its general knowledge of existing conditions in that vicinity. The uncontroverted testimony indicated that there is no surface connection between the waters of the spring from which the applicant seeks to divert and that the protestants would in no way be injured by this diversion. The fact that these protestants made no appearance at the hearing and introduced no testimony to support the burden of proof appropriate to a moving party would indicate that they had no desire to press the protests and were apathetic as to the outcome of the proceedings.

As the place of use named in Application 5435 appeared to be within the place of use shown on the map which accompanied Application 4886 of the La Joya Lodge Corporation and since both the applicant and protestant claimed the ownership of this parcel of land, information was requested of both applicant and protestant relative to the ownership of the place of use named in Application 5435.

Under date of June 7th the applicant informed this office that he was the owner of the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 7, T 6 N, R 14 W., S. B. M., and submitted county tax receipts for the years 1915 and 1916 to support his statement.

CONCLUSION

The purpose to which the applicant proposes to put the water is a useful and beneficial one and as no evidence has been presented to indicate that the proposed diversion would result in injury to the rights of the protestant it is the opinion of this office that Application 5435 should be approved.

ORDER

Application 5435 to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that the said application 5435 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this 13th day of July
1928.

Harold Conkling
(Harold Conkling)
CHIEF OF DIVISION.

WES:JR.