

D 7 6

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

oOo

In the Matter of Applications 3953 and 3954 of the Little
Rock Power and Water Company to appropriate from
Little Rock Creek in Los Angeles County
for Power, Agricultural and
Domestic Purposes

oOo

DECISION A. 3953, 3954 D 203

Decided *August 8, 1928*

APPEARANCES AT HEARING

Hearing Held September 12, 1927

For Applicant

Little Rock Power and Water Co.

C. H. McIntosh

For Protestants

Mata Hara Properties Incorporated
and 25 other well owners in Antelope
Valley

H. P. Schoeller

EXAMINER: Everett N. Bryan, Deputy Chief for Edward Hyatt, Jr.
Chief of the Division of Water Rights.

Hearings Held October 24, 25, 26, 1927, and Jan. 31, 1928

For Applicant

Little Rock Power and Water Co.

C. H. McIntosh

For Protestants

Mata Hara Properties Incorporated and
25 other well owners in Antelope
Valley

John Beardsley

EXAMINER: Everett N. Bryan, Deputy Chief for Harold Conkling
Chief of the Division of Water Rights

O P I N I O N

Application 3953 was filed April 12, 1924, It proposed an appropriation of 50 cubic feet per second of the waters of Little Rock Creek to be directly diverted throughout the entire year and an appropriation of 7,547 acre feet per annum to be diverted to storage from the same source from about November 1st to about June 1st of each season, the water to be used for the generation of power through three power houses as follows:

<u>P. H. No.</u>	<u>Location</u>	<u>Amot of Water</u>	<u>Fall</u>	<u>T.H.P.</u>
(1)	SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 27 T.5N. R11W. S.B.M.	50 c.f.s.	440	2500
(2)	NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 14 T 4 N, R 11 W.S.B.M.	50 c.f.s.	430	2446
(3)	SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 22 T 5 N, R 11 W, S.B.M.	50 c.f.s.	892	892

Under Application 3954, filed April 12, 1924, it is proposed to utilize a portion of the water which has been used for power purposes under Application 3953, for agricultural and domestic purposes on 4320 acres of land located in Sections 29 and 33, T 6 N, R 10 W, S.B.M. and in Sections 3, 5, 7, 9 and 17 T 5 N, R 10 W. S.B.M.

The application asks for an appropriation of 37 cubic feet per second, direct diversion of the waters of Little Rock Creek to be diverted from about February 1st to about November 1st of each year and the diversion of 7,547 acre feet per annum from the same source to storage from about November 1st to about July 1st of each year. Two reservoirs are proposed and are common to both applications, one with a capacity of 2040 acre feet and the other with a capacity of 5,507 acre feet. The applications were protested by the Little Rock and Palmdale Irrigation Districts which protests were sub-

sequently withdrawn and by the Mata Hara Properties Inc. and some 25 other property owners in Antelope Valley.

PROTESTS

The protest of the Mata Hara Properties, Incorporated and twenty five others was filed June 20, 1927.

These protestants own wells located within Townships 5 and 6, North Ranges 11 West S. B. M. from which they claim to be using 5,000 to 6,000 acre feet per annum which they believe will be increased within a reasonable time to approximately from 6,000 to 8,000 acre feet per annum. This water they claim is derived from the annual flow of Little Rock Creek which discharges its flood waters into the gravel beds from which their supply is obtained and they allege in effect that if the applications are approved it would result in depriving them of the use of water to which they are lawfully entitled inasmuch as the lands which applicant proposes to irrigate lie largely within the watershed of Big Rock Creek, which adjoins that of Little Rock Creek on the east, and the return water from use by applicant would not reach the gravel beds from which the protestants derive their supply.

HEARINGS HELD IN ACCORDANCE WITH
SECTION 1a OF THE WATER COMMISSION ACT

These two applications were 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 were set for public hearing in accordance with Section 1a of the Water Commission Act on September 12, 1927, at 10:00 o'clock A. M. in Room 1026, Sun Finance Bldg., Los Angeles, reconvened and continued at 10:00 o'clock A. M. on October 24, 1927 and again at 10:00 o'clock A. M. on January 31, 1928, at the same place. Of these hearings applicant and protestants were duly notified.

INSPECTION BY THE DEPUTY CHIEF OF DIVISION

On March 15, 1928, Mr. Bryan, Deputy Chief of Division, upon the urgent request of the parties in interest went over the proposed project of the Little Rock Power and Water Company and the area occupied by the protestants accompanied by representatives of both applicant and protestant.

PHYSIOGRAPHY AND HYDROLOGY

According to Water Supply Paper 278 of the United States Geological Survey, Antelope Basin has an area of about 1550 square miles of which 930 square miles may be considered as valley land. The water resources of the Antelope Valley region, both surface and underground, depend solely on rain and snowfall within the drainage basin. By far the greater part of its water supply falls as rain and snow on the Tehachapi and San Gabriel ranges which reach elevations of from 4,500 to 7,000 feet in the former to over 10,000 feet in the eastern portion of the latter. The valley receives water most plentifully from the high region south of Little Rock and Tilghman and in moderate amounts from the Tehachapi slopes, from the small area southwest of Palmdale and from the partly wooded slopes of the Sierra Pelona south of Neenach. It is not possible to estimate with any certainty the amount of water absorbed by the unconsolidated filling of the main valley, but in view of the porosity of its marginal gravel fans and the upturned attitude of some of the superficial deposits along the foot of the mountains, it must be a large proportion of the surface water that reaches it. None of the streams which drain into Antelope Valley are large and only a few worthy of mention. Those of the northern slope of the San Gabriel Range and the southeast slope of the Tehachapi are all short, with the exception of a few which have worked their way back far enough into the ranges to become important as water carriers. Of these the most important are Rock, Little Rock and Armagosa Creeks.

A number of streams which, though draining rather small areas, carry considerable water rise at the west end of Antelope Valley between the junctions of the Tehachapi and the San Gabriel Ranges. These streams are fed by copious springs which are particularly numerous at the southwestern end of the Tehachapi Range near the foot of the steep slopes. The largest of these creeks is the Little Cottonwood. No accurate measurements of any of these springs or creeks are available.

Between Little Cottonwood and Cottonwood Creeks are Fish, Livsey, Tierra Seca, and Little Oak Creeks each less than 5 miles long but a source of considerable water even in the summer time. It is probable that the drainage basins of these streams contain large springs which furnish much of the water that eventually finds its way into the gravels in this portion of the Antelope Valley.

Cottonwood Creek, the most important stream flowing into Antelope Valley from the Tehachapi Range, rises at an elevation of over 6,000 feet above sea level at a point some 8 miles west of Knecht's ranch, which is practically at the apex of the great alluvial fan. Measurements of this stream are not available.

At the west end of Rosamond Buttes a sharply marked gulch extends from a point due north of and near Willow Springs. It is not known to just what drainage this gulch belongs but it is probably a distributary of the stream which flows along the $W\frac{1}{2}$ of T 10 N, R 13 W. Other stream channels in the Rosamond Buttes are mere paths for storm waters. Probably the most striking feature of drainage in Antelope Valley is the sudden diminution in flow of all the streams as they enter the valley itself. Except during periods of heavy precipitation the streams, without exception, sink beneath the gravels of the valley at a distance of not more than 3 miles from the mouths of their canyons.

Armagosa Creek, which enters the Antelope Valley about three miles west of Palmdale is the only stream with even moderate flow between Little Rock Creek and the extreme west end of the valley. This stream according to Water Supply Paper No. 278 of the United States Geological Survey is understood to possess little value as a source of supply of surface irrigation waters as it heads somewhat below the snow line in the San Gabriel Mountains and its flow is therefore inconstant. Testimony introduced at the hearing indicated that the average annual runoff of this stream was approximately 2,500 acre feet.

Little Rock Creek, the source of the proposed appropriations of the applicant rises in the high granite mountain County in T 3 N, R 10 W, S.B.M. flows north-westerly and enters Antelope Valley near Little Rock in the north-east quarter of T 5 N, R 11 W. The channel of this creek is better preserved than those of any of the other streams which enter the valley and is traceable almost to the vicinity of the C. N. Reid Ranch, nearly seven miles east of Lancaster. Here, however, the channel begins to lose its character and is not easily followed farther toward Rosamond Lake.

The drainage basin of Little Rock Creek comprises about 78 square miles and undoubtedly gives a greater runoff during the winter months than Rock Creek with a drainage area of approximately 52 square miles, although the summer flow of the stream is considerably less on account of the fact that a larger proportion of the drainage area lies below the part of the range in which the melting of the winter snows is sufficiently retarded to affect the summer runoff. The mean annual runoff of Little Rock Creek according to testimony presented at the hearing by both applicants and protestants is approximately 23,000 acre feet.

Immediately below the point where Little Rock Creek debouches into the valley is a deposit of boulders and gravel, or a detrital fan, the boundaries

of which are distinctly discernable. This deposit extends for more than eight miles northerly from the mouth of the canyon and spreads out to the west of the main channel for a distance of from two to three miles. The "Pear Lands" district upon which the wells of the protestants are located lies immediately to the west of this boulder and gravel deposit.

Mr. Bryan, deputy chief of the Division of Water Rights found upon visiting the site of the proposed project on March 15, 1928, that the topography was as shown on the United States Geological Survey Maps and upon the topographic map contained in and made a part of Water Supply Paper 278.

He reported that Little Rock Creek apparently debouches upon Antelope Valley in such a way as to have created an extensive gravel fan, and that the underground structure as indicated by the pits referred to in the testimony of the protestants at the time of the hearing, and the spoil from the various wells visited, would indicate an open and porous structure.

In his opinion there would appear to be no doubt that the water discharging from Little Rock Creek into Antelope Valley spreads out underground through this fan and that at least a portion of it passes through the area occupied by the protestants and feeds the underground supply of their wells. Assisted by the water discharging from Rock Creek it probably also has a part in supporting the ground water plane beneath the area which it is proposed to serve under Application 3954. There would appear to be little doubt that it spreads out and meets with the underground water which passes from the foothill area to the west and tends to support the ground water plane under the land belonging to protestants.

USE OF WATER IN ANTELOPE VALLEY

From testimony presented at the hearing it appears that the pumping capacity of the entire Antelope Basin is approximately equal to the capacity of the Los Angeles aqueduct or 20,000 miners inches. The amount actually pumped however was estimated as being about 50,000 acre feet per annum based upon an irrigated area of about 20,000 acres of land.

USE OF WATER FROM LITTLE ROCK CREEK

Under Application 912, Permit 476, the Little Rock Creek Irrigation District and the Palmdale Irrigation District are allowed to divert 5,500 acre feet per annum to storage to be utilized for irrigation purposes on 3,059.57 acres located within the boundaries of the Little Rock Irrigation District and 4,810.50 acres located within the boundaries of Palmdale Irrigation District.

Under Application 12-941, Certificate 4, the Palmdale Irrigation District is allowed to divert 250 cubic feet per second of the waters of Little Rock Creek and store the same for irrigation purposes in Harold Reservoir for irrigation use within the boundaries of the Palmdale Irrigation District.

While the two irrigation districts will ultimately require about 12,500 acre feet per annum or nearly 60% of the mean annual runoff of Little Rock Creek, information on file with this office indicates that up to the year 1928 only 2,650 acres had been irrigated by the two districts which would require about 4,000 acre feet per annum.

The area within which the wells of the protestants are located and which is locally known as the "Pear Lands" contains approximately 4,110 acres of which approximately 1,970 acres are in bearing orchards and 695 acres are planted to young orchards, alfalfa and miscellaneous crops. Testi-

mony introduced at the hearing indicated that the annual use of water on these lands was from four thousand to five thousand acre feet per annum.

CONTENTION BY APPLICANT THAT THE DIVISION OF WATER RIGHTS HAS NO JURISDICTION IN THE MATTER OF PROTEST

The applicant objected to recognition of the protest upon the grounds that there is nothing therein which indicates there is any subterranean streams with a well defined or known channel from which the protestants are drawing the waters, that these waters are therefore not subject to appropriation under the Water Commission Act, and that therefore the Division lacks jurisdiction to entertain such a protest.

While it is true that this office has no jurisdiction under the Water Commission Act in the matter of the appropriation of percolating waters, the jurisdiction of the Division of Water Rights being limited to surface water and to underground waters flowing in known and definite channels, this office does not consider that its jurisdiction is limited to such an extent that it is not in a position to protect users of water from an underground basin against encroachment upon their rights by those who seek to appropriate from surface streams which feed the underground waters from which the underground supply is obtained.

FAILURE OF PROTESTANT TO COMPLY WITH REGULATION 11

The applicant further contended that the protestant did not comply with Regulation 11 of the Rules and Regulations of the Division of Water Rights relative to subdivisions 1, 2 and 4 of said Regulation 11.

In this connection it may be stated that the requirements under Regulation 11 are directory rather than mandatory and are for the assistance of the protestant in filing his protest with this office.

While it is true that technically all of the requirements of Regula-

tion 11 were not complied with, Regulation 11 was substantially complied with and sufficient evidence was introduced at the hearing to enable this office to act intelligently in the matter.

EFFECT OF PROPOSED APPROPRIATIONS ON PROTESTANTS

Application 3953

There was no effort made on the part of the protestants to show that the appropriation for power purposes under Application 3953 would be injurious to them and it is believed that it may be accepted without possibility of contradiction that the storage proposed and use of direct flow with the stored water for power purposes without subsequent diversion for irrigation uses could have no injurious effect upon the protestants.

Application 3954

The users of ground water for irrigation in what is locally known as the "Pear Lands District" to the west of Little Rock Creek made a determined effort to show that diversion of the waters of Little Rock Creek to the east of Little Rock Creek for irrigation purposes as proposed under Application 3954 would result in depletion of their underground water supply. The case which they made on this point is inconclusive. It appears that with the prior rights to surface diversions from Little Rock Creek fully developed there will remain an average of some 10,500 acre feet available either for surface diversion under Application 3954 and subsequent applications or for the replenishment of the ground waters of Antelope Basin, or both.

There appears to be a fall in the ground water level to the north and west from the point where Little Rock Creek debouches into the Antelope Basin extending across and beneath the lands of the protestants. There was however no conclusive evidence showing that there were not other sources of supply contributory to the general water supply of the protestants nor was it shown that

the present ground water supply of protestants was fully developed and in use.

While there has been some recession in the ground water of Antelope basin in recent years it was not denied by protestants that this might be due to the cycle of dry years through which we have just passed. Neither was it shown that this recession where apparent, might not be of local occurrence only and that there was not a greater supply feeding the basin than the present draft with a consequent waste at the lower end of the basin. The data upon which the protestants ask us to base a decision that there is a lack of unappropriated water is too fragmentary to support such a conclusion.

LACK OF LEGAL RELATIONSHIP BETWEEN APPLICANT AND USER
UNDER APPLICATION 3954

It is the well established practice of the Division to withhold approval of an application involving the irrigation of land not owned or controlled by the applicant until some basis of legal relationship is established. It would appear a futile and probably a dangerous course to proceed otherwise. The issuance of a permit assumes an early commencement of construction and diligent prosecution of the work to completion thereafter. The Division is required by law to set a time within which construction work under a permit shall be completed and the waters which are appropriated put to complete beneficial use. Certainly the Division cannot intelligently undertake to fix these dates when there does not exist any legal relationship between the permittee and the user of the waters appropriated.

Until there is a definite assurance on the part of the applicant and permittee that the supply which it is proposed to develop can and will be applied to the purpose which is contemplated the applicant and permittee cannot reasonably be expected to actively undertake construction work and the issuance of a permit may well stand in the way of successful negotiations to establish legal relationship.

In the case of Application 3954, the applicant does not own the land which it is proposed to serve. It appears instead that it has had some sort of informal agreement with one B. L. Matthews of Los Angeles which in effect provides that in event storage is provided as contemplated under Applications 3953 and 3954 and the regulated flow made available as proposed therein, then applicant is to receive \$200,000 from said B. L. Matthews. The latter however does not himself own the land which it is proposed to irrigate nor is there any evidence that he has any contract to acquire such lands or to furnish them with water. In other words so far as we are advised there is neither any firm agreement between applicant and said B. L. Matthews nor is there any firm agreement between the latter and the owner or owners of the land to be irrigated, and Mr. B. L. Matthews appears not to have been sufficiently interested in the proceedings at the time of the hearings on these applications to either be present or represented.

At the time Everett N. Bryan, Deputy Chief of the Division and examiner in the proceedings visited the site of the project on March 15, 1928, with representatives of the protestants and with S. P. Jewett, president of the Little Rock Power and Water Company, it was found that some one was putting a well down on the property which it is proposed to serve. Mr. Jewett stated that he had no knowledge of who was doing the work. Recently and since the hearings on this matter the Division has had inquiries from parties regarding the underground supply of the area proposed to be served under Application 3954 and stating that they were contemplating the purchase of land apparently including this area. They contemplated the development of an underground water supply for use thereon and in a region of such widely variable rainfall where, in order to accomplish anything like a full development of the water supply, carry-over storage will be necessary from cycles of wet years to cycles of dry years, this impresses us as perhaps a more practicable course.

The Little Rock Power and Water Company, applicant in this case, made its first filing with this office involving the use of the waters of Little Rock Creek on February 17, 1921. Since that time or for more than seven years it has maintained filings for the purpose of developing a project along lines similar to the one which is now before us. In fact it appears that the company was organized more than sixteen years ago having in mind a similar purpose. It was capitalized for \$200,000 and all the stock has been paid up, yet the company today has completed no construction work, owns no physical properties so far as we are advised and lays claim to nothing other than vague and uncertain "water rights". The company has not even undertaken the field investigations which are necessary in order to determine what water supply is available. After sixteen years of endeavor and the expenditure of \$200,000 of stock subscriptions it has neither physical properties nor data as to water supply, nor tangible evidence of water rights other than those initiated by these filings which are now pending before us.

No further illustration is necessary to point the wisdom of a public policy which would withhold permit for a proposed agricultural development until the applicant has demonstrated financial responsibility, legal relationship to the owner of the lands which it is proposed to irrigate and a general ability to consummate the appropriation if permit is issued. Indeed Mr. C. H. McIntosh, attorney for the applicant, recognized the propriety of this requirement of the Division when during the course of the hearing (see page 278 of transcript) he stated with reference to legal relationship of the lands to be served:

"I appreciate both the suggestion and the significance of it, and am fully aware of the fact that anybody who applies to appropriate water must have some plan to beneficially use it, or he can't expect to be given a permit. Therefore, I fully appreciated the necessity of presenting evidence to the Commission along the lines indicated by you (examiner Bryan) just now, and will undertake to

satisfy the Commission on that"

and again with respect to the same subject, on the same page of the transcript:

"I think it proper that it should be presented, because if there is no place to put the water applied for, to beneficial use, I am frank to confess that I don't think an applicant is entitled to it"

Since the hearing no evidence of legal relationship of the applicant to the lands to be served has been presented.

CONCLUSION

There appears to be no reason why Application 3953 which proposes the development of 5,838 theoretical horsepower by passing a regulated flow of 50 cubic feet per second through three power houses, the lowest of which is located in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 22, T 5 N., R 11 W, should not be approved at this time provided that a clause be inserted in any permit issued in approval of this application to the effect that the water diverted be returned to Little Rock Creek at the tail race of the lower power house or at a point upstream therefrom for as the application now stands the waters are not to be returned to the stream.

The power use proposed by the applicant is a useful and beneficial one and the applicant has entered into a contract to sell the power developed to the Southern Sierras Power Company for delivery to its substation at Victorville from which power will be distributed to Riverside County, Imperial County and other portions of Southern California. It was understood between the two companies that the agreement should be in full force and effect for a period of thirty years from and after the date of commencement of delivery of power thereunder, provided that if the plant to be first constructed was not completed and delivery of electrical energy to the power company begun on or before January 1, 1928, the company should have the right, at its

option, to terminate the agreement on sixty days written notice to the applicant and provided that if the second plant to be constructed was not completed and delivery of electrical energy therefrom to the power company begun on or before January 1, 1929, then the Power Company should have the right, at its option, to terminate the agreement insofar as it relates to the second and third plants to be constructed, and provided that if the third plant to be constructed was not complete and delivery of electrical energy therefrom to the power company begun on or before January 1, 1930, then the power company should have the right, at its option to terminate the agreement insofar as the third plant was concerned.

Testimony presented at the hearing indicated that the applicant had obtained an oral extension of that contract which in the applicants opinion justified the statement that the applicant would have no difficulty in obtaining a proper written renewal of it.

Testimony was also presented to the effect that the applicant would be in a position to proceed with the power project just as soon as permit was issued.

As to application 3954, the use to which the applicant proposes to put the water is a useful and beneficial one and the protestants have failed to establish to the satisfaction of this office that there is an insufficient amount of water in the proposed source of diversion to justify the approval of the application. We see no bar to the issuance of a permit on this application if and when the applicant shows a reasonable legal relationship to the lands to be served. However, in accordance with the well established practice of this office action should be withheld on the application until such contractual relationship has been established.

O R D E R

Applications 3953 and 3954 of the Little Rock Power and Water Company, for permits to appropriate water having been filed with the Division of Water Rights as above stated, a protest having been filed, public hearings having been held, a field investigation having been made, and the Division of Water Rights now being fully informed in the premises

IT IS HEREBY ORDERED that Application 3953 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and a special term or condition to the effect that the water after being utilized for power purposes shall be returned to Little Rock Creek at or above the tail race of power house No. 3 in the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 22, T 5 N, R 11W, S.B.M.

It Is Further Ordered that action on Application 3954 be withheld until further order is entered.

Dated at Sacramento, California, this 8th day of August, 1928.

Harold Conkling
(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

WES:GG
ENB: