

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

cOo

In the Matter of Application 6521 of George D. Hantgin, Peter K. Hantzis and Edward R. Schroff to appropriate from Unnamed Springs in Cozy Dell Canyon, tributary to San Buenaventura River in Ventura County, for Irrigation and Domestic Purposes.

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DECISION A. 6521 D 291

Decided *May 22, 1931*

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APPEARANCES AT HEARING HELD AT VENTURA, CALIFORNIA, MARCH 19 and 20, 1931.

For Applicant

George D. Hantgin  
Peter K. Hantzis and  
Edward Rudolph Schroff

Jarrett Beckett

For Protestants

Cozy Dell Eucalyptus Company  
Ojai Ranch and Development Company and  
Ojai Mutual Water Company

William Lucking

McGee, Robnett and Burke

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, Division of Water Resources, Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF THE APPLICATION

Application 6521 was filed by George D. Hantgin, Peter K. Hantzis and Edward R. Schroff on January 2, 1930. It proposes the appropriation of one cubic foot per second throughout the entire year for irrigation and domestic purposes on 80 acres of land from unnamed springs in Cozy Dell Canyon within the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 26, T 5 N, R 23 W, S.P.B. & M. The

application was protested by Cozy Dell Eucalyptus Company, Ojai Ranch and Development Company and Ojai Mutual Water Company.

PROTESTS

Cozy Dell Eucalyptus Company has three points of diversion in Cozy Dell Canyon all of which are above the proposed diversion of applicants which is described as 75 feet downstream from protestant's lowest point of diversion. Protestant objects to the approval of an application for any diversion so near its present lowest intake as might afford the applicant in the future a right to object to the changing from time to time of the position of its intakes as would best and least expensively give it full capacity.

Ojai Ranch and Development Company and Ojai Mutual Water Company allege that there is no unappropriated water in Cozy Dell Canyon; that Cozy Dell Canyon is tributary to San Buenaventura River upon which protestants have riparian rights; that protestants duly appropriated and have used for more than forty years at least 231 inches from said river; that the confluence of said tributary and San Buenaventura River is upon land owned by them and that the approval of this application would deprive them of water to which they are entitled.

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

Application 6521 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on March 19, 1931, at 1:30 o'clock P.M. at Ventura, California. Of this hearing, applicants and protestants were duly notified.

### DISCUSSION

The mountains traversed by Cozy Dell Canyon are composed of strata of shale and very hard, dense sandstone. The axis of the canyon crosses the various strata almost normal to the strike. A portion of the rain falling on the exposed area of the shale is absorbed and flows laterally along the face of each ledge of denser material toward the axis of the canyon where a "cienega" is found with flowing water at the low point.

The applicant proposes to develop springs in Cozy Dell Canyon by tunneling into the side walls and bottom of the canyon parallel to the strike of the strata. These tunnels will be located at least 75 feet downstream from the lowest diversion (Intake No. 3) of the Cozy Dell Eucalyptus Company.

During the hearing a wide difference of opinion developed as to the source of the waters in Cozy Dell Canyon and the applicant not having the services of an engineer, it was decided to ask Mr. E. H. Jamison an engineer of the Division of Water Resources, who was at that time conducting a study of the water resources of a portion of Ventura County, to make an investigation of the situation in Cozy Dell Canyon and report thereon to this office.

The conclusions of Mr. Jamison are as follows: "The summer flow in Cozy Dell Canyon is derived from the water bearing shales traversed by the canyon. These shales are separated by thick strata of hard, dense sandstone through which the water does not penetrate, but which force the water to the surface in the trough of the canyon above each ledge of hard rock."

Due to the fact that Intake No. 3 of protestant is located at, and on one of these strata of hard, dense sandstone, and the proposed development of the applicants is in the shales lying downstream it was doubtful according to Mr. Jamison "that any development by the applicants at the proposed point

of diversion would affect the flow at Intake No. 3 if such development is confined to digging trenches or driving tunnels approximately parallel to the ledge which lies between Intake No. 3 and the proposed point of diversion". This is what applicant proposes to do and it is not seen wherein the upstream protestant's water supply would be diminished due to the development of these springs as proposed by applicant.

The point of upstream protestant that the approval of this application might interfere with its freedom to change its points of diversion from time to time, as has been its practice in the past, does not appear well taken. The right of an appropriator to change his point of diversion is well established provided there is no injury by such change to other users but there is no decision of the courts or law so far as we know which would prevent a new appropriation merely because such an appropriation might interfere with the opportunity of a prior appropriator to change his point of diversion at some time in the future. Any permit issued by this office will be subject to all prior and vested rights and applicant would of necessity be obliged to allow to go past his point of diversion the water belonging to protestant should protestant elect to move Intake No. 3 downstream to a point below applicant's proposed diversion.

In view of the above it is not seen wherein the rights of protestant Cozy Dell Eucalyptus Company would be jeopardized by the diversion located as proposed by applicant.

From testimony presented at the hearing it appears that the surface flow in Cozy Dell Canyon reaches San Buenaventura River only during periods of flood. Testimony of the Ojai Ranch and Development Company and Ojai Mutual Water Company indicates that the last time these protestants

diverted surface flow from Cozy Dell Canyon was in February 1928, when they diverted about 50 inches for about ten days which diversion was following a rain. Mr. Schroff one of the applicants who was born and raised in the vicinity of Cozy Dell Canyon, testified that water never flows the full length of the canyon into the San Buenaventura River except at times of heavy storms and that in the last ten years, this water had not flowed into the San Buenaventura River for more than two or three days.

It appears from paragraph one of this application that the applicants are seeking the water of springs and not flood water which might reach the San Buenaventura River, and in the event the water of the springs in question were allowed to pass down the canyon, such water would undoubtedly be lost by evaporation and transpiration or travel so slowly underground that it would be replenished by the storms of the succeeding winter before reaching protestants Ojai Ranch and Development Company and Ojai Mutual Water Company usual points of diversion.

It has been urged by the protestants that the waters which the applicant seeks to appropriate are percolating waters only and therefore do not come within the jurisdiction of this office.

While testimony presented at the hearing indicates that water does percolate through the shale formation yet it is the water which actually reaches the underground channel which applicant is seeking to appropriate and that such an underground channel exists appears evident from the fact that the protestant has constructed a dam to bedrock in order to intercept this flow. It is therefore the opinion of this office that the water which applicant seeks to divert is water which flows through a known and definite channel, the appropriation of which water comes under our jurisdiction.

CONCLUSION

The use to which the applicant proposes to put the water is a useful and beneficial one. It appears that the waters which it is proposed to divert do not form any substantial contribution to the waters used by protestants Ojai Ranch and Development Company and Ojai Mutual Water Company nor would the development of these springs prove an injury to protestant Cozy Dell Eucalyptus Company and it is therefore our opinion that the application should be approved.

O R D E R

Application 6521 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 6521 be approved and that a permit be issued thereon subject to the usual terms and conditions.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 22nd day of May 1931.

EDWARD HYATT, State Engineer

BY Harold Conkling  
Deputy

RFC:MP

