

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

oOo

In the Matter of Application 6575 of George W. Clemson to
Appropriate Water from San Marcos Creek in San Diego
County for Irrigation and Domestic Purposes.

oOo

DECISION A. 6575 D. 322

Decided

June 21, 1932

oOo

APPEARANCES AT HEARING HELD AT SAN DIEGO, MAY 12, 1932

For Applicant

George W. Clemson

James D. Scarborough, Jr.

For Protestants

Victor Fleming

P. S. Thatcher

William E. Perry)

Anna V. Hecker, et al.)

A. C. Vaughan

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

oOo

O P I N I O N

GENERAL FEATURES OF APPLICATION 6575

Application 6575 was filed by George W. Clemson on February 24,
1930. It proposes an appropriation of 1239 acre feet per annum from San
Marcos Creek in San Diego County to be collected throughout the entire year
to storage in a reservoir of 1239 acre feet capacity and later to be released
from storage and to be applied to beneficial use for the irrigation of 775.5
acres of land in Sections 16, 17, 20 and 21, T 12 S, R 3 W, S.E.B.M. and
for stock and domestic gardens on said lands. The proposed point of diver-

sion is within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 20, T 12 S, R 3 W, S.B.B.&M. The application was protested by the following:

- (1) Victor Fleming
- (2) Anna V. Hecker, Marie H. Lamb and Albert E. Metcalf
- (3) William E. Perry

PROTESTS

Victor Fleming claims the ownership of 1240 acres of land most of which is riparian to San Marcos Creek; that a portion of the land has been irrigated from water obtained from five wells located along the banks of San Marcos Creek and supplied from said creek; that water has been used for domestic and stockwatering purposes and that all of the water of the creek is necessary for the development of the land riparian thereto.

Anna V. Hecker, Marie H. Lamb and Albert E. Metcalf claim that the proposed diversion would result in the drying up of Los Batiquitos Lake to which San Marcos Creek is tributary and render it valueless as an aquatic sport center. Protestants claim use of water for domestic and stock purposes and subirrigation of their lands and allege in effect that the proposed diversion will deprive them of the water to which they are entitled by virtue of their riparian ownership.

William H. Perry claims riparian ownership and use of water for over 50 years from San Marcos Creek and alleges in effect that all of the water of the Creek is necessary and essential for domestic and irrigation use on lands riparian thereto. Protestant also claims that applicant is not entitled to appropriate water for lands other than those riparian to the creek.

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

Application 6575 was completed in accordance with the Water Commission Act and 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 May 12, 1932, at 1:30 o'clock P.M. in Main Auditorium, Chamber of Commerce Building, San Diego, California. Of this hearing applicant and protestants were duly notified.

PHYSIOGRAPHY AND HYDROLOGY

San Marcos Creek, the source of the proposed appropriation, rises on the westerly slope of the Merriam Mountains and the easterly slope of the San Marcos Mountains about 8 miles northwesterly of the town of Escondido in San Diego County, flows southerly a distance of about six miles to a point where it debouches into the San Marcos Valley, then flows southwesterly about four miles through the San Marcos Valley to a narrow gorge which has been selected by the applicant as a dam site, and then continues in a general westerly course, a distance of approximately seven miles to the Pacific Ocean. About four and a half miles from the ocean the creek broadens out into a salt marsh commonly known as Batiquitos Lagoon most of which is below the high water tide of the ocean and subject to inflow of salt water.

The entire watershed of San Marcos Creek comprises an area of some 68.6 square miles of which 29.3 square miles are above the applicant's dam site.

San Marcos Creek has a very intermittent runoff. It flows only during times of rainfall and for short periods thereafter, thereby rendering surface diversions, other than to storage, impracticable.

WATER SUPPLY

At the hearing applicant introduced as an exhibit, a report by his engineer John F. Covert, entitled "Report and Investigation of Hydrographic Conditions of the San Marcos Watershed and Effect of Construction of Dam at Clemson Damsite, May 11, 1932." This report has been prepared in accordance with accepted engineering practice and the conclusions may be accepted as indicative of actual conditions.

The mean annual runoff at applicant's proposed reservoir is estimated by Mr. Covert at 2407 acre feet, of which amount the reservoir will have a potential possibility of impounding an average of 770 acre feet annually. The average annual spill over the dam has been estimated at 1619 acre feet which waste will be supplemented by an average runoff of 245 acre feet from the area between the reservoir and Fleming's lands and by 1082 acre feet additional below the Fleming lands or a total of 2946 acre feet available for the riparian owners below after deducting for appropriations proposed under this application.

USE OF WATER BY PROTESTANTS

Victor Fleming obtains his water supply from two wells 40 or 45 feet in depth. One of these wells is located on San Marcos Creek within about 15 feet of the center of the stream, the other is within 35 or 40 feet from the stream center. The wells are equipped with 3 inch double acting cylinder pumps and have a capacity of about 15,000 gallons per hour. At times when the creek bed is dry the wells can be pumped out in 20 to 25 minutes. The water is used for garden irrigation and for stock watering during the summer months. When there is a flow of water in the stream bed the stock are watered at the creek. Mr. Fleming has about 350 acres under

cultivation but there was no testimony presented at the hearing to the effect that this area had been irrigated.

William H. Perry has nine wells on his property, two of which are on the creek bank. These wells were drilled in the fall of 1930. No water from these wells has been used for irrigation or other purposes, they having been sunk as an experiment in order to determine the feasibility of the use of water therefrom. Mr. Perry has his bottom lands planted to alfalfa, potatoes, barley and lima beans but these crops have not been irrigated.

No testimony was presented at the hearing in behalf of protestants Anna V. Hecker, Marie H. Lamb and Albert E. Metcalf and the only information submitted at the hearing relative to the conditions existing at the Batiquitos Lagoon was presented by the applicant's engineer. In his report, referred to above, he states that for a distance of over three miles inland from the ocean the lower part of the stream bed of San Marcos Creek is an immense salt marsh covering an area of 667 acres, the upper end of which is about five feet above mean sea level and the lower end below sea level. The tides do not flow in and out of the marsh due to the fact that a sand bar has formed across the lower end which retards flow in and out. Such inflow as occurs from San Marcos Creek and other tributary sources is dissipated by seepage through the bar, by evaporation and by occasional overtopping and breaking of the sand bar.

According to the above mentioned report of applicant's engineer the floodwaters entering the lagoon are so impregnated with salt as to be of no use in that they overflow and dissolve any salts which have been

precipitated by evaporation. It was his view that the production of salt would be facilitated rather than otherwise by intercepting the storm water as proposed in this application.

GENERAL DISCUSSION AND CONCLUSION

It appears from the record that the irregularity of the stream flow in San Marcos Creek renders impracticable direct diversion of its surface waters for irrigation or other purposes. Protestants have sunk a few wells on the banks of the creek and elsewhere on the valley floor and have endeavored to obtain a water supply therefrom. The water so obtained however has been small in quantity compared to the runoff of San Marcos Creek and a large portion of the discharge of the creek has been lost either by direct flow into the Pacific Ocean at times of flood or by evaporation and by seepage into the ocean at times when the flow has not been great enough to destroy the sand bar which forms across the mouth of the creek.

Protestants Fleming and Perry were apparently concerned lest the proposed appropriation endanger their ground water supply. While it appears probable that the basin from which these protestants derive or propose to derive their water supply may be directly charged to some extent by the waters of San Marcos Creek it is uncertain to what extent their supply is dependent upon those waters which originate in the watershed above applicant's dam site, there having been no showing on that point.

Apparently Mr. Perry was under the impression that under claim of riparian ownership he would be entitled to store water at some future date. Such storage rights however can only be acquired under an appropriative right such as has been initiated by the applicant.

Mr. Perry was also concerned lest applicant divert the waters of San Marcos Creek to lands lying without the watershed. Testimony presented

at the hearing indicated that the place of use named in the application lay entirely within the watershed of San Marcos Creek but even should this not be true, it is well established that under an appropriative right water may be diverted from one watershed into another.

No testimony was presented at the hearing on behalf of protestants Anna V. Hecker, et al. relative to the alleged interference with the water supply of Batiquitos Lagoon. There is apparently a considerable waste from the lagoon by evaporation and escape over and through the sand bar at the outlet. There is nothing in the record to indicate that the runoff from the watershed below applicant's point of diversion will not serve all beneficial purposes of this protestant.

The purposes to which applicant proposes to put the water are useful and beneficial and in view of the conclusive evidence of waste which has been and is occurring during years of normal runoff we are of the opinion that Application 6575 should be approved. It would be well however in approving the application to recommend to applicant that as a step toward avoiding trespass upon the rights of the downstream claimants and possible litigation, facilities should be provided for by-passing such flow entering the reservoir as may be necessary to maintain a flow through the channel of San Marcos Creek to the upper limits of Batiquitos Lagoon whenever the natural flow, if undisturbed, would proceed to that point.

Q E D E E

Application 6575 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:

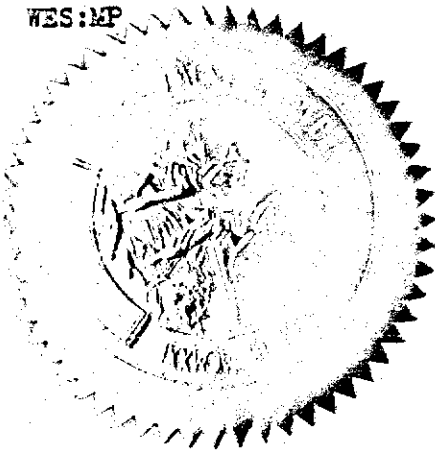
IT IS HEREBY ORDERED that Application 6575 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 21st day of June, 1932.

EDWARD HYATT, State Engineer

BY Harold Conkling

WES:MP



4-1-32

3.