

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

In the Matter of Applications 9109, 9110, and 9111 by
Thomas W. Kinevan, Nell Kinevan Beam, and Mary A.
Kinevan, respectively, to appropriate from an
unnamed spring in the NW $\frac{1}{4}$ Sec. 20
T 5 N, R 23 W, S. B. S. & M. in Santa
Barbara County for Domestic
Purposes

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Decision 9109 - 9110 - 9111 - D 434

Decided *October 28, 1938*

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APPEARANCES AT HEARING HELD IN SANTA BARBARA ON SEPTEMBER 27, 1938

For Applicants

Harry W. T. Ross

For Protestants

Soudslari)
Knapp)

Heaney, Price, Postel
& Parma

For Protestant

Maney

Geo. E. Maney in propria
persona

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

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OPINION

Description of Project

Applications 9109, 9110, and 9111 by Thomas W. Kinevan, Nell Kinevan Beam, and Mary A. Kinevan respectively were originally each to appropriate 5333 gallons per day for domestic purposes, including the irrigation of small gardens and a few trees, from an unnamed spring, tributary of San Jose Creek, in the NW $\frac{1}{4}$ Sec. 20,

T 5 N, R 23 W, S.3.E. & E. in Santa Barbara County. At the time of the hearing on September 27, 1933, it was stipulated by attorney for the applicants that the applications be considered for 500 gallons per day each and they have been amended accordingly.

Protests

These applications were protested by Angelo and Frances Bosio, Teresa Soudalari, William J. Knapp, and George E. Haney.

Angelo and Frances Bosio base their protest on claim of riparian ownership and beneficial use from San Jose Creek beginning before passage of the Water Commission Act. Their point of diversion is located some four miles downstream from the spring from which applicants seek to appropriate and they allege that because of increased diversions by those above them they have been unable for the past four or five years to obtain the water which they require and to which they are entitled for irrigation, domestic and stock use.

Teresa Soudalari bases her protest on claim of riparian ownership and use by herself and predecessors beginning before passage of the Water Commission Act. Her point of diversion is on San Jose Creek some three miles downstream from the spring from which applicants would divert. She alleges that she uses the water for domestic purposes and the irrigation of thirty acres of lemons, that she has six acres more staked for additional planting, and that there is no surplus.

William J. Knapp bases his protest on claim of riparian ownership and use by himself and his predecessors in interest for stock purposes beginning approximately thirty years ago. His point of diversion is on San Jose Creek some five miles downstream from the applicants and he alleges that the proposed appropriations would

deprive him of water to which he is entitled.

George B. Nancy bases his protest on claim of riparian ownership and use by himself and his predecessors for domestic purposes beginning about 1900. He is situated on San Jose Creek approximately one mile downstream from the applicants and alleges that the diversions proposed by applicants would so lower the flow in San Jose Creek as to interfere with his use.

Hearings Scheduled

Applications 9109, 9110, and 9111 having been completed as required by the Water Commission Act and the Rules and Regulations of the Division and being protested were scheduled for hearing on September 27, 1938, in the Supervisor's Room, Court House, Santa Barbara. Of this hearing the parties in interest received due notice.

Protests Withdrawn or Over-ruled

The small spring from which it is sought to appropriate is situated some 210 feet from San Jose Creek to which it is tributary and normally there is no surface flow to the stream. On the day immediately preceding the hearing the ground surface in the ravine below the spring was wet for a distance of only 140 feet and from that point to San Jose Creek was dry. Measured flow at the spring was slightly less than 1500 gallons per day at that time.

There would appear to be no continuity of surface flow in San Jose Creek itself. There is some flow for a short distance below the inflow of a second spring which joins San Jose Creek approximately 2300 feet below the spring from which these applicants would appropriate but this soon disappears, except in times of flood flow and the subsurface flow as one proceeds downstream is forced to the surface only occasionally as impervious strata or dikes cross the channel.

The nearest protestant to the applicants is George E. Haney. As heretofore stated he is situated approximately one mile downstream and by his own admission he has made no use of the water from this source for some five years. This fact he excused with the statement that by a reservoir five years ago he had been dispossessed of some 5½ acres by Mr. Kinovan and an action was pending in court to determine ownership. Before the reservoir however it appears he used only such small amount of water as he hauled in a trailer for domestic use.

There was no effort on the part of protestants to show a direct or immediate connection between the spring and their points of diversion, either upon the surface or by subsurface flow. We are of the opinion that the connection is so remote that diversion of the small amount proposed under these applications would have no substantial or appreciable effect upon the amount of water available to protestants. It was admitted there was a large flood flow during the winter and any reduction in the subsurface flow resulting from these diversions would be corrected or replenished by the storms and flood flow of a succeeding winter before affecting protestants.

It was doubtless the realization of this fact which prompted protestants Teresa Scudelari and William J. Knapp to waive their protests upon reduction in the amount applied for to 500 gallons per day under each application. Angelo and Frances Bosio by their non-appearance at the hearing have failed to support the burden of proof appropriate to a moving party. And George A. Haney not only makes no use of water from this source at the present time but failed to show that the proposed appropriations could reasonably be expected to have any appreciable effect upon his use if he were to undertake a diversion. The use proposed by the applicants is

beneficial and their applications should be approved.

ORDER

Applications 9109, 9110, and 9111 by Thomas W. Kinevan, Nell Kinevan Ream, and Mary A. Kinevan, respectively, to appropriate for domestic purposes from an unnamed spring having been completed and duly noticed as required by the Water Commission Act and the rules and regulations of the Division of Water Resources, said application having been protested, a hearing upon said protests having been held after due notice to the parties in interest, and the Division of Water Resources being now fully advised in the premises,

IT IS HEREBY ORDERED that said Applications 9109, 9110, and 9111 be approved and that permits be issued in approval thereof subject to such of the usual terms and conditions as may be appropriate.

WITNESSED by hand and the seal of the Department of Public Works of the State of California this 28th day of October, 1938.

(Seal)

EDWARD NYATT
STATE ENGINEER

State Engineer