

Before the Division of Water Resources
Department of Public Works
DIVISION OF WATER RESOURCES
State of California

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In the Matter of Application 8156, Permit 5227 of
Fallbrook Public Utility District to Appro-
riate from San Luis Rey River in San
Diego County for irrigation and
domestic purposes

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Decision Application 8156, Permit 5227 D. - 494

Decided November 6, 1942

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APPEARANCES AT HEARING HELD AT LOS ANGELES, OCTOBER 22, 1942

For Applicant

Fallbrook Public Utility District

S. J. Higgins
John Chase

For Protestants

City of Oceanside

Mr. Weiss

Carlsbad Mutual Water Company

Ray Eberhard
S. D. Fraser

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

O P I N I O N

At the time Application 8156 was approved, certain special clauses
were included in the permit terms defining the conditions under which diver-
sions should be made so as not to infringe on prior rights, including a clause
to wit, "8. Subject to the basic condition that any changes which shall be
made shall not materially impair the supply for paramount rights and shall

not unreasonably increase their pumping cost, the Division of Water Resources may, after hearing, held after due notice, eliminate or revise any one of the foregoing conditions or may add others as additional information or changed conditions appear to warrant such eliminations, revisions, or additions, and it may in its discretion call such hearing either on its own motion or on petition of any user of surface or sub-surface water from San Luis Rey River below Monserate Narrows."

On June 9, 1942 the permittee petitioned the Division of Water Resources, pursuant to the provisions of said clause 8, "to modify the terms, conditions, restrictions and limitations of said permit" as follows:

"1. Eliminate all of the provisions of Section 3 of said permit as contained in subsection "e" as set forth under the figures 1, 2, 3, 4 and 5 and also clause set forth in paragraph 5 and substitute therefor a requirement to the effect that if and in the event the pumping of the Fallbrook Public Utility District is such as to materially interfere with the use of water made by any of the owners of paramount rights, or which shall unreasonably increase the pumping or diversion costs of the owners of such paramount rights, that then and in that event the District shall be required to cease diverting waters from said river upon notice from said Division of Water Resources or after reasonable notice sufficient to enable said District to construct the necessary works to then require the pumping by said District from the Bon-sall Basin to the Mission Sector of such supply of water as will enable the owners of paramount rights below the point of diversion of the District to secure such owners from interference with vested rights, and will not increase the costs of pumping or diversion, and in addition to such clause, the insertion of an additional clause to the effect that enforcement of such conditions and limitations by said Division of Water Resources shall not be such as to deprive the consumers of water within the Fallbrook Public Utility District of water for the preservation of life and health.

"2. Extend the time limits set forth in paragraphs 12 and 13 of said permit, an additional five years for the completion of construction work and an additional five years for the completion of the application of water to the proposed use.

"3. For any modification of said conditions and limitations set forth in said permit as will be consistent with justice, equity and the public convenience and necessities of that portion of the population of the State of California living and owning property within the territorial boundaries of said Fallbrook Public Utility District."

The petitioner sets forth in its petition the fact that due to the exigencies of the war it is impossible to secure the necessary construction materials and that due to an abundant rainfall in 1939, 1940, 1941 and to date in 1942, the conditions which necessitated the inclusion of several of the special clauses in Permit 5227 no longer exist.

As a result of a conference with the Deputy State Engineer in charge of water rights held on September 14, Lindley and Higgins, attorneys for petitioner, requested this office under date of October 6, 1942 to consider its petition for extension of time within which to complete the project only, and postpone indefinitely action upon the remainder of the petition. In view of the amended petition of the permittee, a hearing was set on October 9 to be called on October 22 at the office of the Division of Water Resources in Los Angeles, at which time petitioner and other interested parties were invited to appear and show cause why the petition should not be granted. The notice of hearing contained the following paragraphs:

"This hearing will be limited to extensions of time to complete as above discussed and to elimination of any possibility of requirement for hearing on such extensions in the future. It will not take up the general clauses or other special clauses of the permit.

"The matter is important primarily to Fallbrook Public Utility District. The hearing is deemed necessary only to satisfy technical requirements."

On the appointed day the hearing was called to order at Los Angeles at which time the parties indicated above were present and after an explanation of the matter by the examiner all present signified that they were satisfied with the purpose and intent of the hearing.

The request for extension of time to complete construction and use under the permit, and the causes therefor appear reasonable.

It appears that the provisions of clause 8 on page 4 of the permit terms were not intended to apply to petitions for extensions of time, that the parties have so stipulated, and that an order should be made clarifying said matter.

ORDER

A petition having been filed by applicant for an extension of time to complete construction work and beneficial use under Application 8156, Permit 5227, and the Division of Water Resources having given notice of a hearing on said petition together with notice that the hearing would also embrace consideration of the elimination of any requirement for a hearing on future applications for extensions of time, the hearing so noticed having been held, and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that an extension of time be granted to complete construction work and to complete beneficial use of water; and

IT IS FURTHER ORDERED that clause 8 on page 4 of said permit terms shall not be deemed to apply to petitions for extensions of time to complete construction work and beneficial use of water.

WITNESS my hand and the seal of the Department of Public Works of the State of California this *6th* day of November, 1942.

EDWARD HYATT, STATE ENGINEER

BY

Harold Conkling
Deputy State Engineer

MSE:m

