

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Applications 12219 and 12220 by Moonridge Mutual Water Company to Appropriate Water from Four Springs and an Unnamed Stream in San Bernardino County for Domestic, Irrigation, Fire Protection and Recreational Purposes.

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Decision A. 12219, 12220 D. 641

Decided December 27, 1949

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON JULY 14, 1949.

Loris Cady
Sam L. Seley
R. E. Chapman
Jessie Curtis
W. P. Rowe
J. J. Heacock

Applicant's Attorney
Applicant's Representative
Protestant
Protestant's Attorney
Protestant's Engineer
Associate Hydraulic Engineer,
Division of Water Resources,
Department of Public Works,
Representing the State Engineer

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OPINION

General Description of the Project

Application 12219 proposes appropriations from sources within

T 2 N, R 1 E, S.B.B.&M., as follows:

0.08 cubic foot per second from an unnamed stream tributary via Rathbun Creek to Big Bear Lake in San Bernardino County,

the proposed point of diversion being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26,

0.80 cubic foot per second from one spring and 0.12 cubic foot per second from another, both springs being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, and being referred to respectively in the application as "Large Spring" and "Small Spring",

0.06 cubic foot per second from one spring and 0.06 cubic foot per second from another, these springs both being situated within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27 and designated respectively "South Spring" and "North Spring".

The amounts applied for aggregate 1.12 cubic feet per second and use is to extend throughout the year. Small concrete headboxes are to be provided at each point of diversion and water is to be piped therefrom (except from "Small" Spring) to one or another of two small collecting and regulating reservoirs, one of which is 20 x 30 feet in plan by 4 feet deep and the other circular in shape, 60 feet in diameter by 12 feet vertically. The water is wanted for domestic, fire protection and recreational purposes, the place of use being a 1400 acre tract divided into 10,000 lots. The tract is located within Sections 22, 23, 26 and 27 of T 2 N, R 1 E, S.B.B.&M.

Application 12220 is a companion application, merely extending the use under Application 12219 to provide for the irrigation, from April 1 to December 31, of 140 acres located within Sections 22 and 27 of the township mentioned, and utilized as pasture and as a golf course. A riparian right is claimed for this 140 acre tract.

PROTEST

Reginald E. Chapman and Juell E. Chapman protest the two applications. They state that they divert water from Rathbun Creek at a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, T 2 N, R 1 E, S.B.B.&M., that their use of water began in 1940 and that they have used the entire flow of the stream, year round, since that time, for meadow irrigation and for the supply of commercial trout ponds. They claim riparian ownership and a contractual right to the entire natural flow of Rathbun Creek. They assert that the proposed diversion will reduce normal flow, causing stagnation, rendering the water unfit for use, and resulting in the loss of both fish and ponds.

The applicant answers the protest by stating that the protestants' grantors were different from and had no connection with the applicant's grantors and that the protestants' claim of a contractual right as against applicant's grantors is therefore without foundation. It states further that the protestants have not used the entire flow of the stream as they claim, but that on the contrary it (the applicant) has been making extensive use of these same waters, and that only the surplus from such use has been reaching the protestants; that the protestants' statement as to supply of trout ponds since 1940 is misleading since half the protestants' ponds have been built more recently than 1940; and that the statement that the proposed diversion will reduce normal and natural flow is incorrect. The applicant also asserts riparian rights, as well as appropriative rights based upon the earlier filing of Application 3728.

Field Investigation

The applicant and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California

Administrative Code a field investigation was conducted at the site of the proposed appropriation on July 14, 1949 by an engineer of the Division. Both the applicant and the protestants were present or represented during the investigation.

Records Relied Upon

Applications 12219 and 12220 and all data and information on file therewith.

Discussion

According to the report of investigation the only use made by the protestants of surface water in Rathbun Creek is for two commercial fish ponds, of which but one was in use at the time of investigation. That pond was judged to be about 1 acre in extent and 5 or 6 acre feet in capacity, and the supply reaching it was of the order of 10 to 15 gallons per minute, an amount apparently insufficient to also support the other pond. During the drier part of the summer of 1948 the applicant is said to have released water through a 4 inch pipe to help maintain the pond sufficiently to keep the protestant's fish alive. From these circumstances it is concluded that the supply available to the protestant under the reported conditions is already inadequate to his needs and that that supply should not be further decreased by the granting of permits to appropriate water that is naturally tributary to and actually reaches the protestant's place of use.

According to the report of investigation however there are indications that additional water may be developed in the manner proposed by the applicant and that such water, while theoretically tributary to the protestant's fish pond, does not reach that locality in a state of nature. The amount that can be developed in the manner stated, i.e. by collection

of spring water and reduction of evaporation and transpiration losses, cannot be foretold closely from the data at hand but the investigating engineer expresses the opinion, based on his observation of the locality, that more water than the amount applied for can be developed, in ordinary seasons.

Insofar as water may be developed which in a state of nature would not reach the protestants' property such development cannot injure the protestants. Such water obviously is unappropriated water, to which the protestants can lay no claim. Should a permit be issued the protestants' existing rights will be protected by the normal permit wording. In view of these circumstances the protestants' objections to Applications 12219 and 12220 are deemed insufficient. The applications appear to be in the public interest and should be approved, subject to the usual terms and conditions.

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ORDER

Applications 12219 and 12220 for permits to appropriate water having been filed, a field investigation having been made, a stipulated hearing having been held in accordance with Article 13, Section 733(b) of the Administrative Code and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Applications 12219 and 12220 be approved and that permits be issued 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 27th day of December, 1949.

EDWARD HYATT, STATE ENGINEER

By A. D. Edmonston
A. D. Edmonston
Assistant State Engineer.

