

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 Application 12753 by Riverside County Flood Control and Water Conservation District to appropriate water from Bautista Creek Tributary to San Jacinto River in Riverside County for Domestic and Irrigation Purposes.

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Decision A. 12753 D. 706

Decided May 28, 1951

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APPEARANCES AT HEARING HELD AT RIVERSIDE ON MAY 2,  
JULY 11 AND 12 AND SEPTEMBER 12, 1950:

For the Applicant

Riverside County Flood Control  
and Water Conservation District

Wm. O. Mackey, County  
Counsel

For the Protestants

Temescal Water Company

Walter S. Clayson of  
Clayson & Stark, Attorneys  
at Law

City of Elsinore and Lake Elsinore

Arthur M. Gediman, Attorney  
at Law

For Interested Parties

Elsinore Water District )  
Lake Elsinore Recreational )  
Park and Parkway District )  
Elsinore )

William A. Wood, Attorney  
at Law

Well Owners Protective )  
Association of Hemet and San )  
Jacinto, and )  
San Jacinto River Conservation )  
District )

Earl Redwine, Attorney at  
Law

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works, for A. D. EDMONSTON, State Engineer.

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OPINION

General Description of the Project

The application contemplates an appropriation of 3070 acre-feet per annum to be collected in storage without restriction as to time and utilized for domestic purposes and irrigation within a gross area of some 5200 acres within T 5 S R 1 E, T 5 S R 1 W and T 4 S R 1 W, S.B.B. & M. The source filed upon is Bautista Creek, a tributary of San Jacinto River in Riverside County. The water is to be diverted at a point within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 35, T 5 S R 1 E by means of a concrete dam 3 feet high by 150 feet long, conveyed through 1200 lineal feet of gunite lined canal, 150 second-feet in capacity, to spreading grounds lying within Sections 26, 27 and 35 of the same township, the spread waters to be later recovered by pumping by overlying landowners within the place of use. Besides domestic use - at residences and for appurtenant gardens and lawns - some 4000 acres are to be irrigated of which the application states 83% will be devoted to orchards, 10% to alfalfa and 7% to general crops and pasture. Irrigation is to extend from April to October, both months inclusive. The applicant states that it receives a water supply other than the supply currently applied for, i.e. a supply from Lake Hemet Water Company.

### Protests

The Temescal Water Company protests that the water which the applicant seeks to appropriate flows via San Jacinto River to Railroad Canyon Reservoir for the use of the protestant Company under approved Application 10309. It bases its claim of a right to waters of Bautista Creek upon permits issued pursuant to Application 10309 and other (unstated) applications. It describes its point of diversion as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 2, T 6 S R 4 W S.B.B. & M. It asserts that it has stored San Jacinto River Water in Railroad Canyon Reservoir since 1927 for use for irrigation of more than 2000 acres of citrus orchards, at Corona, and that it supplied water to Corona for more than 25 years before the Railroad Canyon Dam was built.

The Fruitvale Mutual Water Company asserts that it diverts at points within Sections 5 and 10 of T 5 S R 1 E, S.B.B. & M., under Permit 468. It asserts that it uses all of the water available except during very heavy floods; that it is beneficially using 9000 acre-feet annually for the irrigation of 4500 acres of land. It protests that the diversion proposed by the applicant will interfere with its own authorized diversion.

The City of Elsinore protests that the proposed appropriation will endanger the health of its citizens by diminishing the inflow of fresh water into Lake Elsinore and by lowering the water level of wells. It protests also that the proposed appropriation will reduce the supply available at Elsinore for domestic purposes and irrigation. It asserts that prior use of water from San Jacinto River has been made by the inhabitants of Elsinore and surrounding districts for a period beginning prior to December 19, 1914. It explains that the use of such water has been

for supplying the wells that furnish drinking water, for irrigation, and for maintaining the water level in Lake Elsinore.

The Elsinore Water District protests that the water sought in the application would otherwise flow via San Jacinto River to Lake Elsinore or into the underground basin adjacent thereto, from which the protestant District as an overlying owner pumps and supplies water to landholders within its boundaries for domestic purposes and irrigation. It states that water has been so pumped since 1883, that the number of consumers has risen from 90 in 1945 to 700 in 1950; and that the static level of the water table and the drawdown, at its measuring well, were 30 and 46 feet respectively in January, 1945 as compared with 78 feet and 104 feet in March, 1950.

Note - The Fruitvale Mutual Water Company protest was withdrawn by a communication dated January 25, 1950. The protest by the City of Elsinore and the protest by Elsinore Water District were filed after the time allowed for the filing of protests.

#### Answers

In answer to the protest by Temescal Water Company the applicant assures the protestant that there is no intention or desire on the District's part to interfere with existing water supply or vested rights, refers to certain reports and concludes therefrom that Bautista Creek is extremely flashy and discharges water mainly during major storms, that a runoff of about 15000acre-feet from the mountain area into San Jacinto River is required before inflow into Lake Elsinore occurs and that minor floods do not extend beyond the Lakeview Mountains. The answer also contains tabulations of streamflow and related figures, a discussion thereof and a conclusion to the effect that in 42 out of 52

seasons of record nominal reductions of the flow of San Jacinto River above Railroad Canyon Reservoir would not injure the Temescal Water Company and that, in short, surpluses exist in Bautista Creek over and above that protestant's rights.

In answer to the Fruitvale Mutual Water Company protest the applicant states in effect that that protestant's diversions under Application 924, upon which the protest is based, cannot be injured by the applicant's proposed appropriation because of the relative location of the points of diversion, actual and proposed. The applicant further states that in view of work undertaken by the applicant district in connection with an easement dated July 28, 1947, the applicant District is actually the protestant Company's agent from which it follows that if there should be damage by District operations under Application 12753 to the supply covered by Application 924, the District would be acting against its own interests. From the foregoing and from a consideration of certain physical features of the stream system the applicant argues that the proposed diversion and storage of Bautista Creek waters cannot adversely affect the protestant company's rights under Application 924.

Answers to the protests by the City of Elsinore and by The Elsinore Water District were not submitted, due presumably to the lateness of the filing of those protests.

Hearing Held in Accordance with The Water Code

Application 12753 was completed in accordance with the Water Code and the Rules and Regulations of the Department of Public Works and being protested was set for public hearing under the provisions of Article 733(a) of the California Administrative Code on Tuesday, May 2, 1950 at 10:00 o'clock A.M. at the Supervisors' Room, County Court House, Riverside, California.

The hearing extended through additional sessions convened at the same place on July 11, July 12 and September 12, 1950. Of the hearing including its reconvened sessions the applicant and the protestants were duly notified.

#### Discussion

Action upon Application 12753 must be governed primarily upon the existence or non-existence of unappropriated water in San Jacinto River. On this crucial point the parties' engineer witnesses at the hearing, in their testimony express divergent opinions. Engineer Bookman, appearing for the applicant, testified in effect that surpluses exist in the amount applied for. Engineers Rice and Crane on the other hand incline to the view that the proposed appropriation will at times diminish the supply upon which the protestants depend.

San Jacinto River rises on the southwesterly slope of the San Jacinto Mountains in Riverside County, flows northwesterly along the base of the mountains named to the vicinity of Colony Heights where it swerves to the southwest, continuing in that direction first across Ferris Valley, then through the hilly belt pierced by Railroad Canyon, and so into Lake Elsinore. Approximate distances along the river from Lake Elsinore at maximum stage (elevation 1261) to points of significance in the discussion appear to be: 1.5 miles to U.S.G.S. Gage ("San Jacinto River near Elsinore"), 3.7 miles to Railroad Canyon Dam, 20.1 miles to Colony Heights, 35.1 miles to mouth of Bautista Creek, 41.6 miles to applicant's proposed point of diversion on Bautista Creek.

That surpluses exist at the applicant's proposed point of diversion may be accepted as established by the hearing testimony. The protestants

do not seriously question the existence of such surpluses. They do however assert that their diversion as proposed by the applicant would aggravate shortages that occur at times on lower reaches of the river and at Lake Elsinore. That seasonal runoff in the reach of San Jacinto River below Railroad Canyon Dam is exceedingly variable is apparent from the following figures extracted from U.S.G.S. Water Supply Papers, for complete seasons since regulation by Railroad Canyon Dam went into affect.

Seasonal Discharges in Acre-Feet of San Jacinto River near Elsinore

<u>Season</u>	<u>Discharge</u>	<u>Season</u>	<u>Discharge</u>
1928-29	1.8	1939-40	226
1929-30	47.6	1940-41	46090
1930-31	27.	1941-42	866
1931-32	10000.	1942-43	7480
1932-33	71.	1943-44	880
1933-34	6.7	1944-45	356
1934-35	28.	1945-46	181
1935-36	88.	1946-47	96
1936-37	82340.	1947-48	28
1937-38	58140.	1948-49	12
1938-39	9450.	1949-50	not released

Information is lacking as to the precise extent to which the water that passes the U.S.G.S. gage above mentioned may be legitimately claimed. According to the testimony wells are numerous in Elsinore Valley and some of them (those on the debris cone of San Jacinto River, at least) may be fed by waters passing the federal gage. Strong representation is made by the protestants of the necessity of maintaining Lake Elsinore at a satisfactory level, i.e. maintaining a flow in San Jacinto River, sufficient along with inflow from other contributing sources to offset evaporation losses from the lake. According to views expressed at the hearing Lake Elsinore should be at elevation 1245 if the dead fish

nuisance and the black gnat nuisance are to be avoided. At elevation 1245 the lake surface appears to be of the order of 3600 acres. If annual evaporation from the lake surface be assumed to be of the order of 4 feet net, evaporation from the lake surface on average may approximate 14400 acre-feet annually. By reference to the tabulation of the preceeding paragraph it is clear that the approval or disapproval of the appropriation under Application 12753 of 3070 acre-feet per annum can have but limited effect in the problem of maintaining Lake Elsinore at the desired level. In 3 of the 21 seasons included in that tabulation the flow of San Jacinto River exceeded the probable evaporation loss from the lake, in 3 other seasons it was a substantial fraction, and in the other 15 seasons an insignificant fraction, of that loss.

Rights held by the protestant Temescal Water Company include rights initiated by the filing of Applications 1752 and 10309. Application 1752 which has been licensed covers an appropriation of 12000 acre-feet per annum from San Jacinto River at Railroad Canyon Reservoir, the collection period extending from about December 1 to about June 1. Application 10309 sought to supplement rights under Application 1752 by an additional appropriation of 13 cubic feet per second by direct diversion, year-round, and 15000 acre-feet per annum, without restriction as to time of collection. Application 10309 was approved; the time within which to apply the water in question to beneficial use has been extended to December 1, 1951.



At or about the time of commencement of construction of the Railroad Canyon Dam several suits were brought against the applicant Temescal Water Company, by the City of Elsinore and other downstream objectors. An outcome of the litigation was a compromise, expressed in a contract executed October 29, 1927. That contract appears to be the same document as referred to in the hearing testimony in the matter currently at issue as the "Tilley Agreement," a copy of which was introduced at the hearing as Applicant's Exhibit #11. In the "Tilley Agreement" the parties agreed to certain introductory facts, one of which being that Lake Elsinore overflows at about elevation 1261, the overflow passing through the City of Elsinore and into and down Temescal Wash. As to reservoir operation the parties agreed that the Temescal Water Company shall be permitted to intercept and store in Railroad Canyon Reservoir as follows:

"Whenever the lake level is above 1255 feet it may so divert and store an unlimited quantity.  
Whenever the lake level is above 1250 feet and at or below 1255 feet it may so divert and store a yearly maximum of 13,500 acre-feet.  
Whenever the lake level is above 1245 feet and at or below 1250 feet, it may so divert and store a yearly maximum of 6000 acre-feet.  
Whenever the lake level is at or below 1245 feet second party shall not make any diversions -----."

With reference to the protest by Temescal Water Company the applicant argues that surpluses above the needs of that protestant have existed in 42 of the 52 years last past. The applicant's presentation is based upon a detailed analysis of the considerable data that have accumulated over the many years that development of the waters of San Jacinto River has been in progress. The applicant's presentation while questioned by the protestants in certain matters of detail was not refuted in any

important particular. . . In view of the evident need for a fuller exploitation of the water resources of the stream system, the apparent feasibility of the applicant's project, the infrequency of seasons in which abstention by the applicant from its proposed diversion would benefit downstream interests and the impracticability of ascertaining in advance what seasons those would be it is the opinion of this office that the protest by Temescal Water Company cannot with fairness to all concerned be considered a bar to approval of the application.

The contentions by the City of Elsinore and by the Elsinore Water District that the appropriation proposed under Application 12753 will materially deplete the supply feeding wells upon which those protestants depend or will cause a material lowering of the water surface of Lake Elsinore cannot be considered to have been established by the testimony or by other available data.

#### Summary and Conclusions

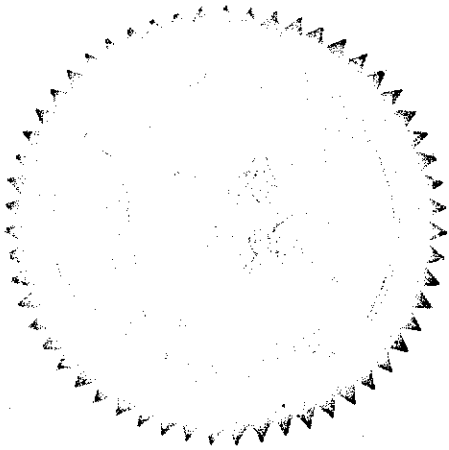
Unappropriated water exists at times in the source from which appropriation is sought under Application 12753. Such water ordinarily may be taken and used as proposed in that application without injury to other users. The application should be approved, subject to the usual terms and conditions.


#### ORDER

Application 12753 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 State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 12753 be approved and that a permit 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 28th day of May, 1951.



  
A. D. Edmonstone  
State Engineer