

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 13654 by Joaquin and Frances Alves to Appropriate Water from an Unnamed Spring Tributary to San Antonio Creek in Ventura County for Irrigation, Domestic and Stockwatering Purposes.

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Decision A. 13654 D. 721

Decided September 17, 1951

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IN ATTENDANCE AT INVESTIGATION CONDUCTED BY THE DIVISION OF WATER RESOURCES AT THE SITE OF THE PROPOSED APPROPRIATION ON NOVEMBER 21, 1950:

Joaquin Alves	Applicant
Robert R. Willard	Applicants' Attorney
W. H. Powell, Attorney )	
M. S. Norris, Division )	(Representing Richfield Oil
Superintendent )	( Corporation, Protestant
D. S. Bailey, Surveyor )	
Gerald J. Brady	Protestant
J. J. Heacock	Associate Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer

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Note: The protestant City of/Buenaventura was not represented at the investigation.

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OPINION

General Description of the Project

The project contemplates the appropriation of 0.05 cubic foot per second, year-round, from an unnamed spring tributary to San Antonio

Creek, diversion to be made at a point within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35, T 5 N R 22 W, S.B.B. & M. The project includes a concrete diverting dam 3 feet high by 6 feet long, and 6500 lineal feet of 2 inch pipe line. The proposed place of use is a 30 acre tract within the SW $\frac{1}{4}$  of Section 2, T 4 N R 22 W. The water is wanted to supply 3 dwellings housing a total of 10 people, a half-acre garden and 30 head of cattle and horses. According to the application the irrigation of a 30 acre orchard is also contemplated. The applicants claim no other water right or source of water supply.

#### Protests

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The City of Buena Ventura protests that the proposed appropriation will interfere with its appropriation, at Casitas Narrows on the Ventura River, of the flow of the stream, except flood flow, for public use for municipal, domestic, industrial and irrigation purposes. It bases its claim of a right to the water in question upon appropriation and use prior to 1914. It asserts that its use of water is continuous, that it has increased from 3721 acre-feet in 1923-24 to 6017 acre-feet in 1946-47, and that because of the insufficiency of surface flow, it has drilled wells above Casitas Dam in order to obtain underground water. It describes its point of diversion as being located S 50° W 2900 feet from the NE corner of Section 8, T 3 N R 23 W, S.B.B. & M.

The Richfield Oil Corporation protests that the proposed diversion will deprive it of water required for domestic use, including stockwatering. It bases its claim of a water right upon use begun prior to December 19, 1914. It claims that its right (while held by its predecessors) was adjudicated by the California Supreme Court, June 7, 1912, Case No. LA-2777, Shurtleff vs. Kehrer. It states that its point of diversion is at the approximate center of the S  $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 35, T 5 N R 22 W, S.B.B. & M.

Gerald J. Brady protests that the proposed appropriation would cause 50 acres of his citrus trees to suffer from lack of water, thereby depreciating the value of his property. He states that during most of the year there will be no water left in the creek if the applicant is permitted to divert 0.05 cubic foot per second therefrom. He estimates that the flow of the creek on March 26, 1950 was about 20 gallons per minute. He claims a right to the use of water from the same source by virtue of use begun prior to December 19, 1914. He states that his diversion heads within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35, T 5 N R 22 W, S.B.B. & M., and that the applicants' proposed point of diversion is about 1000 feet upstream therefrom. He states that the value of his installations for using water from San Antonio Creek on his ranch is about \$30,000. He states finally that each year there is less water available in San Antonio Creek and that each year the creek dries up almost completely by June.

Answers

In answer to the protest by the City of San Buenaventura the applicants deny that the diversion proposed by them will injure the protestant City. They also deny that San Buenaventura has any right to the water supplied by the spring filed upon. They contend that no waters from that spring reach or have ever reached that protestant's point of diversion, which they state is at least 15 miles distant from their proposed point of diversion.

Answering the protest by the Richfield Oil Corporation the applicants deny that the diversion which they propose will injure that protestant, deny that that protestant has any right to the use of water from the spring filed upon, deny that that protestant or its predecessor diverted water from that spring prior to 1914 or since and deny that the water in

question was adjudicated as alleged by the protestant. The applicants argue that the waters adjudicated in the Shurtleff vs. Kehrer case were waters flowing from another source or sources. They assert that the water which they hope to appropriate does not reach and never has reached the protestant's true point of diversion, which, they contend, is the second point of diversion described in the protest. They argue that the protestant's attempted appropriation at that second point of diversion was not in accordance with the water code. They assert that they were not parties to the litigation mentioned in the protest, nor were their predecessors. They allege that they intend to develop additional water in the spring which they have filed upon, by opening it up, and by utilizing a pipe as a conduit, thereby preventing losses by evaporation and seepage. They allege finally that any and all rights which the protestant corporation may have acquired in and to the waters filed upon have been lost; they refer in that connection to the provisions of Section 1241 of the Water Code.

The applicants answer the protest by Gerald J. Brady by denying that that protestant has at any time used water from the source from which diversion is now proposed. They allege that Protestant Brady's use of water tributary to San Antonio Creek has been from a stream known as Wilsie Creek and not from the spring currently filed upon. They state that his diversion heads a mile and a half downstream from their proposed diversion rather than the thousand feet alleged in the protest. They assert that they will salvage water that is now being lost by evaporation and seepage, and will develop additional water by opening up the spring.

Documents

Affidavits and exhibits have been submitted by the parties in support of their respective positions as follows:

1. Affidavit of Robert R. Willard, applicants' attorney, setting forth that the predecessors in interest of the applicants Alves were not parties to the litigation between the former owners of the properties now held respectively by Gerald J. Brady and Richfield Oil Corporation.
2. Affidavit of Joaquin Alves, applicant, setting forth his observations as lessor of the Vogel Ranch from 1929 to 1950 as to water diverted to that property and concluding that the appropriation which he seeks will not diminish the supply available at any of the protestants' points of diversion.
3. Affidavit of Gerald J. Brady, protestant, a repetition, in effect, of his original protest.
4. Protest on behalf of Richfield Oil Corporation, amplifying its original protest and setting forth points and authorities in support of its position.
5. Affidavit of Fred Jumper, an ex-employee of Richfield Oil Corporation and its predecessor, from 1917 until 1947 - a history of the development of the water system serving the Vogel Fee property during that period.
6. Affidavit of M. E. Norris, Division Superintendent, Richfield Oil Corporation, of November 28, 1950 - his observations relating to the construction and maintenance of the pipe line serving the Vogel Fee property and to the use of water thereon.
7. Affidavit of Donald G. Bailey, a civil engineer employee of Richfield Oil Corporation, setting forth his observations as surveyor of the Vogel Fee property and water facilities.
8. Affidavit of Willie M. Horton, an employee of Richfield Oil Corporation and of its predecessor's lessee, since 1931, reciting his experiences in maintaining the water supply system on the Vogel Fee property.

9. Affidavit of Mario J. Boccali, lessee of Vogel Fee property, stating his estimate of water requirements.
10. Exhibit - Map of Hunds Canyon area.
11. Exhibit - Indenture between Coonrad Smith and James Bracken relating to quit claim of certain water rights.
12. Exhibit - Water Notice dated June 29, 1889.
13. Exhibit - Indenture between Reuben Wilsie et al. and Coonrad Smith.
14. Exhibit - Agreement between David Warner et al. and S. Bristol, relating to a right of way in Hunds Canyon for a water conduit.
15. Exhibit - Superior Court Judgement and Supreme Court Decision with Remittitur in Shurtleff vs. James Bracken et al.
16. Exhibit - Richfield Oil Corporation Chain of Title.
17. Exhibit - Stipulation, Shurtleff vs. Kehrer, dated January 31, 1929
18. Affidavit of M. E. Norris, Division Superintendent, Richfield Oil Corporation, of December 12, 1950 relative to the Alves property.

#### Field Investigation

The parties 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 November 21, 1950 by an engineer of the Division. The applicants and the protestants were all present or represented at the investigation except the City of San Buenaventura which was not represented.

#### Discussion

The proposed point of diversion, according to the report of the investigation of November 21, 1950, is at a point of seepage in the bottom of a narrow canyon tributary via Hunds Canyon to San Antonio Creek. At the time of the investigation the flow at that point was estimated to be less than 1 gallon per minute. According to the report, metered measurements

made by the Richfield Oil Company in August 1950 showed production over a 5 day period averaging slightly under 5 gallons per minute. The investigating engineer states in his report:

"There undoubtedly is unappropriated water at the proposed source during the winter and spring months of years of average or above average precipitation, but it is doubtful that there would be enough supplies during the summer and fall months of any but exceptionally heavy years to warrant any substantial development."

According to the protests and the documents supporting them supply has often been deficient both at the protestant Oil Corporation's intake and at Protestant Brady's intake. Mr. Brady states in his protest dated March 26, 1950: "At the present time there is approximately 20 gallons per minute". Mr. Brady states also, " --- each year the creek dries up almost completely by June." His reported requirement, in contrast, is an irrigation supply for 50 acres of citrus plus an unstated acreage in other crops. The Richfield Oil Corporation protest states that that protestant diverts and uses 6 miner's inches when that amount is available and the entire flow of the stream at other times. The report of investigation of November 21, 1950 states:

"The applicant was lessee from the protestant for a number of years but did not irrigate or maintain a 30 acre vineyard on the place due to insufficient water."

Applicant Joaquin Alves himself states on page 2 of his deposition of November 30, 1950 (Document 2):

"----- in 1932 said source ---- became insufficient --- and I ---- constructed a pipeline to connect with a pipeline that came from Sisar Creek. That I used water from Sisar Creek for the operation of said Vogel Ranch from 1933 to 1949 and that from 1933 to 1949 inclusive the pipeline extending in a Northerly direction from said lower spring was in a state of disrepair and was not used to supply water to the Vogel Ranch."

The investigating engineer's statement and the applicant's statement as just quoted both indicate that the water supply has been insufficient for the utilization desired on the Vogel Ranch (Vogel Fee property). The applicant's statement that the pipe line was not used from 1933 to 1939 suggests that the protestant Oil Corporation's water right may have been lost by non-user. That point however cannot be regarded as established conclusively in view of statements contained in the affidavits of Fred Jumper and M. E. Norris (Document 5 and 6) and it is therefore assumed that that protestant's claimed right is valid.

The protestant Oil Corporation's contention on pages 7 and 8 of its supplemental protest (Document 4) as to a legal right to extend its pipeline to the so called upper spring appears consistent with Section 1706 of the Water Code.

The amount of the protestant Oil Company's appropriative rights to waters of Hunds Canyon presumably cannot exceed the capacity of its pipeline which in the report of investigation was estimated to be of the order of 40 gallons per minute. However, it appears that in recent years the company has used all the water available in the source, in amount far less than the pipe line capacity, during the summer and fall months, and that no surpluses exist during those months.

In view of the small reported flows in August and in November, 1950, the investigating engineer's statement as to unlikelihood of occurrence of surpluses during summer and fall and Protestant Brady's



statement that the creek ordinarily fails by June it is concluded that unappropriated water is nonexistent during summer and fall. For this reason and for the added reason that an appropriation limited to winter and spring is of no apparent value for the purpose stated in the application it is the opinion of this office that Application 13654 should be denied.

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ORDER

Application 13654 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 13654 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 17th day of September 1951.

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A. D. Edmonston  
State Engineer