

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 14252 by Almeida V. Burton to  
Appropriate Water from Bee Canyon Tributary to Cottonwood Creek  
in San Diego County for Irrigation and Domestic Purposes.

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Decision A. 14252 D. 735

Decided March 24, 1952

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In Attendance at Investigation Conducted by the Division of Water  
Resources at the Site of the Proposed Appropriation on November 27, 1951:

Almeide V. Burton	Applicant
Tadini Bacigalupi	Attorney representing protestant California Water and Telephone Company
A. F. Poulter	Manager, San Diego Bay Division, California Water and Telephone Company
J. J. Heacock	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer.

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OPINION

General Description of the Project

The application initiates an appropriation of 0.072 cubic foot per second for direct utilization, year round, plus 4.27 acre feet collected between December 1 and May 31 of each season in off-stream, temporary storage. The water is to be diverted from Bee Canyon, a tributary of Cottonwood Creek

in San Diego County, for domestic purposes and irrigation. The proposed diversion is to head at a point within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 14, T18S R2E, SBB&M. Diversion is to be effected by pumping from a sump in the stream channel, storage by means of a concrete dam, 6 feet high by 38 feet long, the latter creating a reservoir 0.5 acre in surface area and 4.27 acre-feet in capacity. The proposed place of use, 25 acres in extent, lies within the S $\frac{1}{2}$  of the same Section 14. A 3 acre orchard, 5 acres of alfalfa, 4.5 acres of general crops and 12.5 acres of pasture are to be irrigated, year round. Water is to be used for domestic purposes at a 6 bedroom house, a bunk house, a barn and a laundry. No mention is made in the application of any other water right or source by which the property might be supplied.

#### Protests

The California Water and Telephone Company protests that the proposed appropriation "will deprive protestant of water now being appropriated and beneficially used by protestant for service as a public utility in the City of Coronado and contiguous unincorporated areas". It bases its claim of a right to the use of water from the source in question upon alleged prior appropriation and riparian ownership. It claims to have been diverting from Tia Juana River for domestic, industrial, irrigation and public purposes in Coronado and in the "South Bay Area" of San Diego County. It states in effect that its diversions head respectively within Section 33 of T18S R2W and Section 4 of T19S R2W, SBB&M. The protest contains the following explanatory note:

"Protestant diverts water from the Tia Juana River, of which Bee Canyon tributary to Cottonwood Creek is a subsidiary under prior application and permit issued

by the Division of Water Resources. Protestant is presently engaged in litigation brought by landowners - - - - which said litigation alleges that there is insufficient water for the uses of protestant under its application which is prior to the appropriation of applicant. Although protestant contends that there is ample water for its uses in said Tia Juana Basin, protestant is at present under restriction as to the amount of water it may take from said River Basin and any taking by applicant will tend to reduce the amount of water available in said basin."

J. R. Goodbody, Attorney for the City of Coronado, protests the application, stating in part:

"The water to the people of Coronado is distributed by the California Water and Telephone Company which appropriates from the Tijuana River and its tributary system including Cottonwood Creek. At present there is a water deficiency and any added appropriation will be detrimental to the City of Coronado."

The protestant claims no right in his own name but refers instead to a "prior right of distributing agency to appropriate water." The protestant states further:

"One of the principal sources of water which is distributed to the people of the City of Coronado is the Tijuana River and its tributary system when pumping is permitted. The people of the City of Coronado can use all water which may be obtained by the distribution agency from the source and have been so using for many years."

As to the location of the protestant's diversion point the protest mentions "wells on lower Tijuana River." The protest concludes:

"San Diego County is suffering from a period of drought and the best information available indicates that the existing sources of water available for Municipal uses will soon be exhausted. If the proposed appropriation is permitted, it will directly result in making the existing water shortage worse."

Answers

The applicant's answers to the two protests are somewhat similar. In her answer to the protest by California Water and Telephone Company she states in part:

"I am asking for unappropriated water - - - -

"The protestant claims a point of diversion so far removed from my property, at the present rate of flow evaporation and soil absorption would deplete the stream before it even reaches the Cottonwood River.

"At the present time the stream in question goes underground or at least it disappears on my property about two hundred feet north of my southern boundary line. I fail to see how use of part of the water that passes my point of diversion would cause injury to the Protestant when it is doubtful if any of the water at the present time reaches his watershed.

"The amount of water that I am asking for - - - will not affect the amount of water in the Tiajuana Basin - - - -."

The applicant's answer to the protest by J. R. Goodbody contains statements as follows:

"I doubt if any of the water from the stream that goes through my property reaches the protestants' point of diversion at the present time due to evaporation and soil absorption between here and the 30 miles or so to their wells.

"The people of Coronado have water in spite of the drought under the present appropriation. Due to the same drought my wells are depleted and at the present time are not supplying enough water for domestic use. This community is suffering as much or more than any in the county because its natural supply of water is being exploited and sold in other communities.

"I base my claim that amount of water asked for  
- - - - - does not reach the protestants - - - - -  
on the fact that cattle on the Marron Valley  
pasture come on my property to water. This  
stream under normal conditions joins the Cottonwood  
River in Marron Valley."

#### 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, Title 23, Waters, a field investigation was conducted at the site of the proposed appropriation on November 27, 1951 by an engineer of the Division. The applicant and the protestant California Water and Telephone Company were present or represented during that investigation. Protestant Goodbody was neither present nor represented.

#### Records Relied Upon

Application 14252 and all data and information on file therewith.

#### Discussion

According to the report of investigation the proposed point of diversion is at a bedrock outcrop near the head of a narrow gorge about 1 mile above Cottonwood Creek, and the flow at that point was about 12 gallons per minute on November 27, 1951 and about 10 gallons per minute in August, 1950. According to an old resident of the area, the report states, the stream channel at that point had not been dry in 50 years. The report states further that Bee Canyon between the proposed point of diversion and Cottonwood Creek is steep and narrow but contains some small basins, aggregating 2 or 3 acres altogether, which support fairly thick growths of alders and other water loving vegetation. The report presents certain flow data relating to Cottonwood Creek and Tia Juana River, and certain data relating to extractions from Tia Juana Basin. It refers, for additional pertinent data, to Referee and Watermaster Reports, Tia Juana Basin, in the Division files.

The water rights in the Tia Juana Basin in California have been under litigation since 1936 (Marvin L. Allen, et al., v. California Water & Telephone Company, a corporation, et al., Superior Court of San Diego County, No. 85482). In July, 1947, the Department of Public Works of the State of California, acting through the State Engineer, was appointed referee and water master for the Court in these proceedings. The State Engineer has not as yet submitted his final Report of Referee to the Court. Regardless of whether or not the total water rights in the Tia Juana Basin in California exceed the average annual replenishment to that Basin, there are times when waters of the Tia Juana River waste into the ocean, and such wastes constitute unappropriated water.

Records of the surface flow of the Tia Juana River at Nestor Bridge, situated about 3 miles from the ocean, have been kept by the United States Geological Survey since 1936 and the monthly and mean seasonal discharges at this station are shown in Table I. Information developed by the State Engineer in the course of his investigation as referee indicates that percolation in the channel of the Tia Juana River below Nestor Bridge is of the order of 10 cubic feet per second. Percolation from the stream channel evidently serves the useful purpose of replenishing the underground reservoir and is therefore unavailable for appropriation but any flow in excess of the amount that percolates is available for appropriation as it would otherwise waste into the ocean. It follows, by reference to Table I, that water might have been diverted in the manner and in the amount proposed by the applicant without injury to lower users, during the years of record, for periods ranging from zero to 7 months and averaging about 3.8 months per season.

Table I

Monthly and Seasonal Mean Discharges of Tia Juana River near Nestor (cfs)

Season	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Mean
1936-37	0	0	.48	29.1	688.0	248.0	147.0	37.0	4.24	0	0	0	91.9
38	0	0	0	0	3.43	715.0	58.5	8.75	0	0	0	0	66.6
39	0	0	24.0	34.3	185.0	73.3	38.8	1.51	0	0	0	.50	28.7
1939-40	1.23	.69	2.22	4.77	26.4	8.51	12.6	0	0	0	0	0	4.60
1940-41	0	0	129.0	32.9	244.0	1741.0	3057.0	298.0	51.5	8.51	3.94	3.93	43.0
42	21.8	25.1	49.3	66.2	49.5	201.0	60.5	8.85	3.73	1.35	.64	1.84	40.9
43	4.50	7.10	9.24	48.6	36.5	84.5	49.8	7.80	2.07	.32	0	.43	20.8
44	2.40	3.92	49.8	18.5	1163.0	517.0	35.5	16.4	5.27	2.34	1.77	3.42	148.0
45	7.04	23.0	15.1	19.1	18.8	98.8	24.1	2.47	.30	.39	2.81	3.45	18.0
46	3.30	4.81	71.7	35.2	18.5	14.0	19.9	2.21	.15	0	0	.34	14.2
47	5.77	11.2	11.2	8.31	5.91	5.11	.36	.67	0	0	0	0	4.04
48	0	0	17.2	2.18	3.81	3.31	.52	0	0	0	0	0	2.27
49	0	0	0	60.2	17.8	8.57	1.13	0	0	0	0	0	7.30
1949-50	0	0	0	0.08	2.57	.08	0	0	0	0	0	0	0.21

Table II

Monthly and Seasonal Mean Discharges of Cottonwood Creek above Tecate Creek (cfs)

Season	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Mean
1936-37	0	0	4.81	18.4	161.0	96.7	88.8	24.4	8.38	3.35	0.13	0	32.9
38	0	.05	0.68	0.95	6.88	323.0	33.0	3.58	.65	.11	0	0	31.1
39	0	0	6.15	6.83	40.5	44.1	25.7	1.45	.09	0	0	1.20	10.3
1939-40	0.28	.24	.68	1.70	4.85	2.10	4.18	.31	0	0	0	0	1.18
1940-41	0	0	18.0	4.82	21.7	207.0	676.0	163.0	26.7	.65	.107	.039	92.9
42	1.64	1.97	5.19	16.8	24.1	60.9	28.0	3.89	.92	0	0	0	11.9
43	0	0	.09	14.1	6.85	28.7	18.9	10.5	4.51	.42	0	0	7.02
44	0	0	.99	2.56	55.8	29.9	6.72	2.29	.75	.01	0	0	8.07
45	0	3.42	.86	.99	1.24	20.6	4.92	.37	.10	0	0	0	2.73
46	0	0	16.5	5.80	2.24	1.75	3.01	.17	0	0	0	0	2.48
47	0	.24	.44	.48	.38	.36	.09	0	0	0	0	0	.16
48	0	0	.97	.099	.32	.64	.17	0	0	0	0	0	.184
49	0.40	0	0.09	8.94	5.05	2.13	0.62	0.04	0	0	0	0	1.42
1949-50	0	0	0	.06	.49	.29	.02	0	0	0	0	0	0.07



Records of the flow of Cottonwood Creek above Tecate Creek have also been kept by the United States Geological Survey since 1936. The monthly and mean seasonal discharges at this station are shown in Table II. The gaging station on Cottonwood Creek is located about 1.5 miles below the point where Bee Canyon enters that stream, or about 2.5 miles downstream from the applicant's proposed point of diversion. The significant fact revealed by Table II is that the channel of Cottonwood Creek in the vicinity of the gage is dry for from 3 to 7 months of each year of record. When that reach is dry it is obvious that the diversion of such water as the applicant can capture upstream therefrom cannot injure the protestants or other downstream users.

#### Summary and Conclusions

The information at hand indicates that unappropriated water exists at times in the source from which appropriation is sought under Application 14252 and that such water may be taken and used in the manner proposed by the applicant without injury to any downstream diverter. The information indicates that the time of occurrence of unappropriated water is dependent upon one or the other of two conditions, viz. the existence of a greater flow in Tia Juana River at the USGS gage near Nestor than can percolate into underground storage between that gage and the ocean or the existence of a dry reach on Cottonwood Creek between Bee Canyon and Tecate Creek. It indicates that the first condition is probably met during the months of December through April of seasons of above-normal runoff and that the second condition is met during most of the remaining months of most seasons.

It is the opinion of this office that the application should be approved subject to the usual terms and conditions but subject also to a special condition limiting diversions to times when the flow of the Tia Juana River is reaching the ocean or when a dry reach exists on Cottonwood Creek between Bee Canyon and Tecate Creek.

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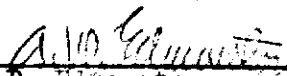
ORDER

Application 14252 having been filed with the Division of Water Resources as above stated, protests having been filed, a stipulated hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 14252 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate and subject to the following special term and condition, to wit:

Diversions under this permit may be made only at such times as a continuous flow in the channel of Tia Juana River is reaching through to the Pacific Ocean or at such times as no surface flow is passing the location of the U.S.G.S gage on Cottonwood Creek, approximately one half mile above the confluence of that stream with Tecate Creek.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 24th day of March 1952.

  
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A. D. Edmonston  
State Engineer

