

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 14612 by W. B. Jones to Appropriate
Water from an Unnamed Stream Tributary to San Luis Rey River in
San Diego County for Irrigation Purposes.

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Decision A. 14612 D. 801

Decided September 7, 1954

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Appearances at Hearing Held at San Diego on June 25, 1953:

For the Applicant

W. B. Jones

In propria persona

For the Protestants

Fallbrook Public Utility District

Phil D. Swing

Rincon Indian Reservation

Max G. Mazetti

Vista Irrigation District

Leroy A. Wright

Escondido Mutual Water Company

Leroy A. Wright

Bonsall Basin Landowners Association

No appearance

San Luis Rey Heights Mutual Water Company

No appearance

Harry C. Arthur, III

Phil D. Swing

Rincon, La Jolla and Pala Indian Reservations Richard P. MacNulty

EXAMINER - L. C. JOPSON, Supervising Hydraulic Engineer, Division of
Water Resources, Department of Public Works, for A. D. EDMONSTON,
State Engineer.

Also present - J. J. Heacock, Senior Hydraulic Engineer, Division of
Water Resources.

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OPINION

General Description of the Project

The applicant seeks to appropriate 50 gallons per minute from May 1 to November 15 and 12 acre-feet per annum collected between November 15 and May 1, from an unnamed stream tributary to San Luis Rey River, in San Diego County, at a point within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, T10S R2E, SBB&M. The application states that the maximum rate of diversion to storage will be 50 gallons per minute. Diversion is to be effected by means of a concrete dam 6 feet high by 20 feet long. Water is to be conducted through a 3-inch steel pipeline, 10,000 feet long, to an off-stream reservoir which is to be located near the center of the NE $\frac{1}{4}$ of Section 36, T10S R1E, SBB&M. The storage dam is to be of earth construction, 12 feet high by 266 feet long. The reservoir is to have a surface area of 1.5 acres and a capacity of 12 acre-feet. The water is to be utilized in irrigating a 40-acre pasture.

Protests

The Fallbrook Public Utility District, through George F. Yackey, its general manager, protests the application, stating as the basis of its objection:

"The proposed appropriation ... taken in connection with the diversions of others from the San Luis Rey River and its tributaries ... will substantially reduce ... water available ... below the amount reasonably required ... to supply ... Fallbrook Public Utility District"

The protestant bases its claim of a right to the use of water from San Luis Rey River upon "prior applications, prior appropriations and prescriptive rights". In this connection it asserts:

"Since first use and diversion from San Luis Rey River was begun by the District, the diversions and use have continually increased and protestant anticipates continued and increased diversion and uses under its Permit No. 5227, Application No. 8156 up to a maximum of 5000 acre-feet per annum."

It mentions no terms under which its objections may be disregarded, short of withdrawal or dismissal of the application.

Rincon Indian Reservation, in a letter dated July 3, 1952, protests the application, stating that Indians have used water from San Luis Rey River for the past century for stockwatering and irrigation, that in the past year the flow of that stream was insufficient to satisfy their needs, and that the right of way necessary for the applicant's pipeline would not be granted. It quotes from an alleged letter from the Attorney General's office as follows:

"The court held that since the stream running through the reservation was classified as nonnavigable by the state, the subsequent creation of the reservation impliedly reserved water rights for the Indians."

Vista Irrigation District protests the application for three main reasons: first because it is committed by contract to make good to the Indians and to Escondido Mutual Water Company any shortages in the flow of San Luis Rey River insofar as those users are entitled to divert and because that demand upon it (the District) would be increased by a new upstream diversion such as the applicant proposes; second, that any

diversion for use of non-riparian lands, in view of the limited flow of San Luis Rey River, is an infringement on its own riparian right; and third, that it holds Application 12742 and that "the Harris application, if granted, would operate to reduce pro tanto the amount of flood waters which might be otherwise amenable" for diversion by protestant. Included in the protest is the following statement:

"The use of water by the Vista Irrigation District has been approximately 12,500 acre-feet per annum and, in addition, the District sells from Lake Henshaw to Escondido Mutual Water Company and Bennet Mutual Water Company 5,300 acre-feet per annum, making a net requirement for use from Lake Henshaw of 17,800 acre-feet per annum, plus provision for losses in transit, and releases in satisfaction of the prior rights of the Escondido Mutual Water Company and the Indians of the Pala and Rincon Reservations."

Escondido Mutual Water Company in protesting the application states that its right to divert from San Luis Rey River is based upon an appropriation in 1893 by its predecessor in the amount of 20,000 miner's inches at a point near the boundary between Sections 22 and 23, T10S R1E, SBB&M, that diversions under that appropriation commenced about 1895 and have been continuous ever since, the water being conducted to Lake Wohlford and thence distributed among stockholders, that it has also used water for developing electric power, that actual diversion since 1896 has varied from 1,662 to 12,411 acre-feet. This protestant then states:

"It is the position of the company that it has acquired by prescription rights in ... San Luis Rey River in excess of ... 4,143 acre-feet ... and clearly has ... a diversionary right, founded on its original notice of appropriation, in that amount."

The protestant then contends:

"Since the ... Company obtains the waters ... to which it is entitled, by ... diversion from stream flow, the proposed application ... being made upstream from protestant's point of diversion, shall operate as a direct injury to the right of Escondido Mutual Water Company and would be in derogation of it."

Bonsall Basin Land Owners Association protests that the supply of water required by its members for use on Basin lands would be seriously reduced by diversions under the proposed appropriation, that the members' lands are riparian to the San Luis Rey River, that use by association members is for irrigation, and that their lands lie at various points between Bonsall and the crossing of Highway 395.

San Luis Rey Heights Mutual Water Company claims that the diversion proposed by the applicant would interfere with its existing rights by reducing the supply reaching its wells. The latter, it states, were dangerously low during the summer of 1951. It asserts that since August, 1944, it has diverted approximately 1,500 acre-feet per annum for domestic purposes and irrigation. It asserts further that its place of use is 1,626 acres in extent, that its diversion point is located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31, T10S R3W, SBB&M, and that its claimed right is based upon riparian ownership.

Harry C. Arthur III, for himself and on behalf of the co-owners of Camelot Ranch, protests the application on the asserted belief that the appropriation sought will injure him and his associates. He claims a right, based upon ownership of riparian and overlying lands, to waters

supplied by San Luis Rey River and states that the diversion serving his property heads near the intersection of that stream with the north-easterly line of Lot 1, Rancho Guajome. Extracts from his protest are as follows:

"By diverting and consuming a substantial amount of the waters of the tributaries of the San Luis Rey River, it will diminish the flow ... on which our lands are dependent for their water supply; there is already a deficiency in the available water in the river for the riparian land owners and prior appropriators.

* * *

"We have at present three wells on our property each being a 20-inch gravel-packed, 14-inch casing well which have been used for irrigation of approximately 130 acres of alfalfa, corn, sudan grass and vegetables. Protestants intend to dig additional wells ... in order to make a fuller use of our ... rights and irrigate eventually 280 acres ... and we have extended and are continuing to extend our ... facilities for this purpose. Use extends over the past ten years.

* * *

"This new and additional proposed diversion with resultant consumptive losses together with other upstream diversion ... would encroach materially upon protestants' supply ... and substantially reduce the ... flow ... where the river reaches protestants' land to such an extent as to make it impossible for protestants to secure the quantity of water they are entitled to and reasonably require The proposed diversion, with other upstream ... users would decrease the ... flow into the Mission Basin ... to the danger point of inviting salt water intrusion to protestants' great injury. The approval of this application would ... cause prolonged and expensive litigation by ... vested right owners in order to protect their ... rights."

Answers

The applicant's answers to the several protests are similarly worded. In each answer the applicant denies the protestant's claims and allegations and alleges as follows:

"That the water sought to be diverted by applicant rises about a mile and a quarter from the San Luis Rey River and goes underground or disappears in the ground about three-fourths of a mile from the San Luis Rey River, and the formations and terrain between point of water disappearing and San Luis Rey River are such there is no reason to believe that this water ... ever reaches the San Luis Rey River. Whereas, if this application is granted, applicant proposes to convey this water to a point only about a quarter of a mile from the San Luis Rey River for the irrigation of a pasture meadow approximately 40 acres in extent where all seepage and waste water from said irrigation will go into the San Luis Rey River, the terrain and formation between this meadow ... and the ... river being such that the seepage water, waste water and water from rain runoff goes into San Luis Rey River."

Hearing Held in Accordance with the Water Code

Application 14612 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing under the provisions of the California Administrative Code, Title 23, Waters, on Thursday, June 25, 1953, at 10:00 o'clock a.m. in the Board of Supervisors Hearing Chamber, Civic Center Building, San Diego, California. Of the hearing the applicant and the protestants were duly notified.

Hearing Testimony

Relevant testimony by witnesses at the hearing of June 25, 1953, was in substance as follows:

W. B. Jones, applicant, testified (pages 8 to 10 of transcript) to the effect that Application 14612 had already been filed when he bought the place, that the proposed point of diversion is between one-half and three-quarters of a mile from the San Luis Rey River, that the water of

the proposed source goes underground and does not reach the river, that in his opinion the water filed upon isn't doing anyone any good, that he estimates the flow of the source to be about 3.5 miner's inches, that he intends to combine that flow with water from another source and to use it for irrigation. On cross examination he testified further (pages 10 to 29 of transcript) to the effect that he has not yet built a reservoir, that he intends to dam the source and conduct the water to what he terms Wermser Meadow, that the source at the proposed point of diversion is about 12 feet wide, that the channel is steep, that his guess as to its slope is 35 per cent, that that rate of slope extends all the way to San Luis Rey River, that the channel is "pretty rocky", that the water in the source "disappears in the ground, it goes down out of sight, then comes up again maybe a couple of times then it quits altogether", that he concludes from that that the flow in the source doesn't reach San Luis Rey River, that "even during all the rains it never crosses the roads to get in the river", that his statement refers to surface flow, that he "can't swear" as to whether sub-surface flow reaches the river, that the channel leading to the river is a canyon, that water has flowed all the way to the river, that the banks of the source are rocky most of the way, that the bed is sandy in some places, that he has made no physical test to determine whether the flow of the source reaches San Luis Rey River by flowing underground, that he has concluded that it does not because surface flow does not, that he has "owned the ranch" a little over 12 months and has

lived there "part of the time", that he does not believe the flow of the source is enough to irrigate 40 acres, that he expects to get additional water, stating in that connection:

"There is a canyon coming down to the Wermser Meadow that runs a lot of water in the winter time. What we actually figured on was a 30 acre-foot dam, fill it through the winter time and use that through the summer."

In answer to a question as to whether his proposed development would "cut anyone off" from water below him he replied:

"I certain don't. At least I don't know of anybody down there that could possibly use the water. It goes right back into the river. I don't know where it would go from there."

George Cromwell, testified (pages 30 to 33 of transcript) to the effect that he is a registered civil engineer, that he was educated at Stanford University, that he has specialized in hydraulic matters, that his experience dates from about 1920, that he was chief engineer for the San Diego County Water Company from 1924 until 1946, consulting engineer for Vista Irrigation District from 1946 until 1950, that he has been familiar with San Luis Rey River since about 1923 or 1924, that he prepared the map marked "Protestants' Exhibit A". As to use and availability of water along San Luis Rey River he testified (pages 33 and 34 of transcript):

"... we will start here at Henshaw Dam, a dam which was built in 1922 by the San Diego County Water Company. The gates were closed and the reservoir began to impound water on December 25, 1922. Since that time there has been no water waste past this dam. In other words, the dam has contained the entire runoff of the river above that point, some 205 square miles. The reservoir above the dam has never been filled. I might say that the dam was increased in height in 1928 from a 164,000 acre-foot capacity to 203,000 acre-foot capacity reservoir. The highest point of storage was

in May 1945 when the water in the lake reached a total of 179,000 acre-feet. Water is released from this reservoir down the natural channel in the San Luis Rey River, following it for about 10 miles to the intake of the Escondido Canal. Now, between Henshaw Dam and the Escondido Canal is some 35 square miles of drainage area that contributes water which is diverted via the Escondido Canal and up to the capacity of this canal. Escondido has been for the past 50 years ... diverting all flow of the river possible to get into the canal, and of course at times when there is a flood flow on the river, a high discharge on this 15 square miles, there has been a flow past the intake. Now, Escondido has certain written contracts with the Indians After that the Escondido Mutual have rights in that water which extend up to the capacity of their existing canal which was enlarged in 1928. That capacity is 76 second feet at the intake."

Witness Cromwell further testified (pages 35 to 44 of transcript) to the effect that the Escondido Mutual Water Company has made practically continuous use of the water of San Luis Rey River available at the intake of Escondido Canal ever since 1895, that the flow of the river up to 76 cubic feet per second has been diverted by Escondido Mutual Water Company, that he (the witness) has prepared three certain charts introduced as Hearing Exhibits B, C and D. Witness Cromwell explained the charts and stated as his conclusion as to natural runoff from San Luis Rey River:

"I don't think there is any surplus water available for appropriation ... above the Escondido intake ... because Henshaw Dam certainly contains everything above that point and between Henshaw Dam and the intake the operation of the Escondido Canal has control of a large part of the flow of the river Personally I don't see how anyone could take water out of the river between these two points without interfering with existing rights"

Witness Cromwell testified further (pages 37 to 44 of transcript) to the effect that he is familiar in a general way with the tributaries entering San Luis Rey River below Lake Henshaw, that in his opinion the water that

rises in those streams reaches San Luis Rey River and becomes a part of its flow, that the watershed which feeds the tributaries is a rough, mountainous area, that Lake Wohlford is the main distributing reservoir to which Lake Henshaw and the Escondido Canal contribute, that at the outlet from Lake Wohlford there is a power plant, that from the tail race thereof water enters the main conduit of Vista Irrigation District and the conduits belonging to Escondido Mutual Water Company, that these conduits distribute the water to extensive service areas, that numerous agencies are dependent upon San Luis Rey River from Henshaw Dam to the mouth of the river at Oceanside, that there have been numerous law suits stemming from insufficiency of water supply. As to the effect of approval of the application upon the Indians' water supply he testified:

"Well I think it would be that much less water for the Indians. I can't see where they could help but be affected to a certain extent. It might be minor but these things all tend to reduce the quantity of water available for the people now using it, whether it is one or one hundred of them."

Witness Cromwell answered a question by Applicant Jones as to whether there is any way of proving that water ever gets to the river by stating:

"No. You can't see it after it gets underground, but it is my assumption that it can't go any other place. I don't know where it can go if it doesn't go down to the river."

To the applicant's comment, "There are lots of trees, those trees do take up a lot of water", the witness replied, "they probably do take some of it."

Max C. Mazetti testified (pages 45 to 47 of transcript) to the effect that the people and the council of Rincon Indian Reservation oppose the application because at present the available water supply will permit the irrigation

of only one-seventh of the area that might be irrigated if supply were sufficient, that the Indians are opposed to appropriation of water around the area of the Rincon Reservation and above it, that the Rincon Reservation includes 3480 acres, that a total of about 700 acres is irrigable, that all available water is put to use.

Motion to Dismiss

On conclusion of the applicant's presentation of testimony

Attorney Wright introduced the following motion:

"On behalf of the protestants Escondido Mutual Water Company and Vista Irrigation District ... I would like to move that the application be dismissed on the ground that the applicant has not sustained any burden of proving the existence of any waters which are available for appropriation, and also upon the ground that the proposed works are entirely different and more extensive than the proposals contained in Application 14612."

Attorney Swing (representing Fallbrook Public Utility District and Harry

C. Arthur III) thereupon stated:

"I join in the motion on behalf of the two protestants which I represent, and add to it that the applicant has not borne the burden of proving or submitted any evidence in support of his answers which contains two separate propositions which are advanced by him but unsupported by the evidence offered by him."

Mr. MacNulty stated, " ... I join in that motion for the record";

Mr. Mazetti stated, "I will join on behalf of the Indians." The Examiner ruled:

"These motions will be considered by the Department in reviewing the record and the decision made after conferring with

our legal department. Meanwhile to be sure we have all the information that is available in the matter we will proceed with the hearing."

Closing Statements

Extracts from closing statements are as follows:

By Attorney Wright --

"It has been unquestionably shown that all of the waters of this stream are being put to reasonable beneficial uses and that ... there is no showing of waste or surplus water available for appropriation and amenable to any permit which might be granted."

By Attorney Swing --

" ... this river area is one of notorious water deficiency It is a matter of common knowledge that it is so deficient that the areas within the watershed which are dependent upon it for their supply, domestic as well as agricultural, have gone to tremendous expense running into millions of dollars to import large quantities from hundreds of miles away, from the Colorado River, and bringing it in ... It is a matter of common knowledge that the stream is over-appropriated and still is very much deficient in the requirements of those who have prior rights to what this applicant could possibly get by reason of this application if it were granted. A long while ago the Division ... recognized the fact that there wasn't only occasional ... water under exceptional circumstances and in its last appropriations which have been granted and which are prior to any that could have been granted here, the Division wrote in that the water he could appropriate and use was such as would otherwise waste into the ocean. No one claims, not even the applicant, that the water he is applying for would ever reach the ocean. There are too many hungry, thirsty mouths down the stream who have prior right to any right this applicant could possibly have to intercept the quantities which he has asked for. So in this case it seems to me, and I hope the Division will take notice of the fact, that it is established by the evidence ... and by the previous uses ... that the river and its valleys are areas of notorious deficiency in which those with prior rights on the river are already engaged in the importation ... of outside water. It is too much to say that of that little water that is

available in there that this late-comer ... should be permitted to take part of the water resources of this river and draw upon prior right owners, further burdening them to go to great distances at great expense to get water to make up what he might be able to take out up above there."

By Applicant Jones --

"The only thing I got to say is, what we figure is that the water never reaches the river. If there is any way to prove it I bet money right now it don't. If it gets to the river let them have it. I don't believe it gets to the river. There are acres and acres of big oak trees. That is what I am going on that it never reaches the river. Where we are going to move in is a little closer to the river than where those are and all the surplus goes under there. If we put a reservoir in it gradually leaks down in the river and really would do more good than where it is. If it goes in the river of course I don't want it. That is the only argument."

Hearing Exhibits

Hearing exhibits were introduced during the course of the testimony as follows:

Protestants' Exhibit "A" -- A marked map of the region under discussion, made up of four United States Geological Survey quadrangles.

Protestants' Exhibit "B" -- A tabulation entitled "Runoff of San Luis Rey River at Escondido Intake".

Protestants' Exhibit "C" -- A tabulation entitled "Divisions of Natural Flow at Escondido Intake".

Protestants' Exhibit "D" -- A tabulation entitled "Flow Past Escondido Ditch Intake".

Other Available Information

Available references relevant to the matter of Application 14612 include United States Geological Survey records of the flow of San Luis Rey River, the files pertaining to other applications to appropriate from the same stream or from its tributaries, and Division Bulletins 48 and 48-A.

The surface flow of San Luis Rey River has been measured at five points and the results are set forth in the Water Supply Papers of the United States Geological Survey and in unpublished records of that agency. The uppermost point of measurement is at Lake Henshaw where runoff from the 209 square miles of watershed that are tributary thereto averaged 60.4 cubic feet per second, equivalent to 0.289 second-foot per square mile, over the eleven year period prior to completion of Henshaw Dam. The next point of measurement downstream is designated "San Luis Rey River below Pala Diversion Dam". Its described location scales about 25 miles below Lake Henshaw, about 22 miles below the applicant's proposed point of diversion and about 14.5 miles below the intake of the Escondido Canal; flows are of record for irrigation months only; the record shows monthly mean flows in cubic feet per second during such months as having been as follows:

San Luis Rey River below Pala Diversion Dam
(approx. 27.0 miles above mouth)

<u>Year</u>	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>	<u>Nov.</u>
1944	*	5.06	3.62	.77	.23	.22	.41	10.5
1945	*	3.33	1.32	.37	.50	.27	.38	.44
1946	17.9	2.21	.78	.40	.13	.18	.20	6.92
1947	1.98	.38	.25	.14	.10	.10	.15	.50
1948	1.86	.057	.038	.01	.006	0.0	.005	.041
1949	3.37	.02	0.0	0.0	0.0	0.0	0.0	.02
1950	.17	.03	0.01	0.0	0.0	0.0	0.0	.10
1951	.03	0.0	0.0	0.0	0.0	0.0	*	*

* No record

Some 6.7 miles farther downstream is the gaging station "San Luis Rey River at Monserate Narrows", some 9.8 miles below that "San Luis Rey River at Bonsall", some 9.8 miles still farther downstream and but 0.7 mile above the river's mouth on the ocean shore, "San Luis Rey River at Oceanside". Flow has been measured year-round at the three last named stations; monthly mean flows in cubic feet per second, as reported by the Geological Survey are tabulated on accompanying pages.

San Luis Rey River at Monserate Narrows
(approx. 20.8 miles above mouth)

<u>Water- Year</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>Jan.</u>	<u>Feb.</u>	<u>March</u>	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>
1938-39	13.1	17.1	41.4	41.4	59.8	43.5	34.5	12.2	5.48	3.42	2.60	7.29
1939-40	11.2	11.1	14.2	30.9	48.9	27.2	38.2	7.34	5.20	2.48	1.87	2.32
1940-41	4.79	11.0	54.2	24.2	62.4	258.	244.	66.5	21.3	9.56	9.21	9.50
1941-42*												
1942-43*												
1943-44*												
1944-45*												
1945-46*												
1946-47	2.49	9.49	13.8	15.4	15.2	12.4	7.06	3.71	1.90	1.14	.37	.24
1947-48	1.43	2.93	4.30	4.32	5.14	6.07	4.58	2.46	1.62	.76	.28	0.0
1948-49	0.01	1.45	2.70	5.85	8.17	14.4	9.33	2.94	1.88	.65	.15	0.0
1949-50	0.0	0.16	2.53	4.05	5.25	4.22	2.69	2.09	1.04	.34	0.0	0.0
1950-51	0.00	0.0	0.56	2.41	3.80	3.34	2.57	2.10	0.68	0.05	0.0	0.0

* No record

San Luis Rey River at Bonsall
(Approx. 10.5 miles above mouth)

<u>Water Year</u>	<u>Oct.</u>	<u>Nov.</u>	<u>Dec.</u>	<u>Jan.</u>	<u>Feb.</u>	<u>Mar.</u>	<u>April</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>
1929-30				7.61	15.9	27.8	9.92	69.8	4.61	0.08		
1930-31				9.55	35.4	9.52	3.61	2.68	0.01			
1931-32		0.05	34.1	29.6	607.	10.9	29.0	13.3	2.87			
1932-33			12.5	43.0	37.8	23.1	11.8	20.4	2.41			
1933-34				11.9	15.1	12.3	2.89	.03				
1934-35	0.16	.07	10.6	27.6	55.2	28.6	15.4	6.15	.96	.02		
1935-36			0.37	1.39	50.0	17.2	23.3	1.95	.21			
1936-37	3.51	.90	51.6	102.	918.	546.	188.	53.4	18.9	1.34	.06	
1937-38	.029	6.98	20.8	25.3	87.5	956.	84.5	48.5	10.7	2.75	.219	1.63
1938-39	5.22	15.5	69.8	63.9	98.5	63.0	44.0	9.85	1.33	.08		
1939-40	4.35	7.82	14.4	55.3	75.4	31.4	51.1	5.82	.82	.02		
1940-41		1.61	121.	41.2	113.0	547.	408.	99.6	23.3	5.08		
1941-42	18.9	37.6	64.1	77.1	61.8	77.8	52.8	17.4	4.58	.45		4.85
1942-43	0.21	4.30	17.0	184.	81.0	207.	81.9	14.9	5.96	.18		.08
1943-44		1.02	33.9	27.4	94.0	77.5	21.0	6.85	2.57	.18		
1944-45		16.5	17.9	17.8	40.3	89.1	33.0	4.86	.86	.04		.03
1945-46			111.	24.5	18.6	19.3	29.2	3.16	.13		1.20	
1946-47		.05	4.06	11.4	14.6	10.9	3.27	.22	.01			
1947-48			.71	.41	1.51	.83	.45					
1948-49			.19	.46	.75	.75	.13					
1949-50				No flow during year	No flow during year	No flow during year						
1950-51				No flow during year	No flow during year	No flow during year						
1951-52				2.67	70.	70.	18.3	1.15				

Omission of figures indicates zero flow.

San Luis Rey River at Oceanside
(Approx. 0.7 miles above mouth)

Water year	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
1929-30								46.7	0.12			
1930-31					No flow during year		22.8	8.64				
1931-32	4.44		563.	1.63	104.							
1932-33			31.2	20.4	14.6		3.20	11.5				
1933-34			No flow during year	2.27	No flow during year		1.05	1.10				
1934-35			52.2		24.0		10.5					
1935-36			14.1		1.65		198.					
1936-37			848.	79.6	544.			57.6	14.8			
1937-38			62.8	14.8	1022.		80.1	43.7	3.43			
1938-39			104.	63.8	65.9		36.1	4.82				
1939-40			79.9	33.3	30.1		46.8	2.00				
1940-41			137.	39.2	559.		411.	106.		21.7		1.37
1941-42	5.35	33.3	89.9	39.2								
1942-43			61.4	126.								
1943-44					No record							
1944-45					No record							
1945-46					No record							
1946-47					No record							
1947-48					No flow during year							
1948-49					No flow during year							
1949-50					No flow during year							
1950-51					No flow during year							
1951-52					16.2		.03					

.65

Omission of figures in water-years prior to 1942-43 indicates zero flow.

Applications to appropriate from San Luis Rey River and/or tributaries include among others the following:

Application 8156 by Fallbrook Public Utility District to appropriate 10 cubic feet per second year-round (but not to exceed 5000 acre-feet per annum), from wells within Section 11, T10S R3W, for irrigation;

Application 8205 by Carlsbad Mutual Water Company to appropriate 5 cubic feet per second year-round and 1022 acre-feet per annum, collected between November 1 and April 30, from wells within Section 18, T11S R4W, for irrigation; and

Application 8418 by City of Oceanside to appropriate 12.5 cubic feet per second year-round from wells within Section 13, T11S R5W and Section 4, T11S R4W, for municipal purposes.

n.b. - Applications 8156, 8205 and 8418 were vigorously protested on three general grounds, i.e., that the proposed diversions would so diminish surface and sub-surface streamflow that protestants would be unable to divert their entitlements; that resultant lowering of water table would increase pumping costs; and that infiltration of salt water would result. These applications were heard together and were approved, subject to detailed conditions.

Application 10873, Lyall, for 1.23 cubic feet per second from Pauma Creek, from October 1 to August 1, at a point within Section 9, T10S R1W, for irrigation;

Application 11090, Arroyo Corrido Rancho, for 3 cubic feet per second year-round and 145 acre-feet per annum, collected between December 1 and March 1 (at a rate of not over 3 cubic feet per second) from Paubal Creek, at a point within Section 32, T9S R1W, for domestic purposes and irrigation; and

Application 11093, Salomon, for 0.5 cubic foot per second from May 1 to October 31 and 18.86 acre-feet per annum, collected without restriction as to time, from Van Meter Creek, at a point within Section 28, T10S R2W, for irrigation.

n.b. - Applications 10873, 11090 and 11093, all initiating appropriations from tributaries to San Luis Rey River, and all protested by downstream users, were heard jointly and were approved subject to permit clauses limiting diversions to times when the surface flow of San Luis Rey River reaches the ocean.

Application 11731, Northern San Diego County Water Development Company, for 183,000 acre-feet per annum, to be diverted without restriction as to time, for domestic purposes and irrigation, at a point within Section 31, T10S R3W (Bonsall reservoir site). The application is not yet complete.

Application 12742, Vista Irrigation District, 37,000 acre-feet per annum, to be diverted at a point within Section 31, T10S R3W (Bonsall reservoir site) between October 1 and July 1 of each season, for domestic purposes and irrigation.

Application 12808, Carlsbad Mutual Water Company, 18,500 acre-feet per annum, to be collected at Bonsall reservoir site, between October 1 and July 1, for domestic purposes and irrigation.

Application 12809, San Luis Rey Heights Mutual Water Company, 37,000 acre-feet per annum, to be collected at Bonsall reservoir site between October 1 and July 1, for domestic purposes and irrigation.

Application 12810, Escondido Mutual Water Company, 37,000 acre-feet per annum, to be collected at Bonsall reservoir site, between October 1 and July 1, for domestic purposes and irrigation.

Application 12811, Fallbrook Public Utility District, 37,000 acre-feet per annum, to be collected at Bonsall reservoir site, between October 1 and July 1, for domestic, irrigation and municipal purposes.

n.b. - Applications 12742, 12808, 12809, 12810 and 12811 carry stipulations to the effect that said applications are filed concurrently and are to be considered as having equal priority. All of the applications are incomplete.

Bulletins 48 and 48a present, respectively, information relating to water supply and utilization within San Diego County and supplemental information pertaining particularly to San Luis Rey Basin. Bulletin 48a (released in 1937) contains, among others, the following passages:

"The San Luis Rey River drains a basin of some 565 square miles The Henshaw Dam ... controls the flow from the upper 206 square miles of this basin. The Escondido Mutual Water Company diverts water out of the basin. The Rincon and Pala Indians and numerous other private owners pump water from the river bed for the irrigation of the overlying river bottoms.

"Had the present upstream diversions been in effect during the 48-year period from 1887 to 1935, the mean seasonal flow past the Bonsall dam site would have been 23,170 acre-feet. This flow ... varied from season to season between wide limits.

* * *

"The total mean seasonal runoff at Oceanside is 26,540 acre-feet.

"The present draft of approximately 5,900 acre-feet is approaching the maximum yield which may be obtained with reasonable safety.

"A reservoir storing 162,610 acre-feet of water in the Bonsall basin could have been operated ... to produce a seasonal yield of 14,180 acre-feet

* * *

"The preliminary analyses of this investigation have established the suitability of the Bonsall site for the construction of an earth dam"

* * *

"The San Luis Rey River in its course ... to the ocean passes through a series of basins which have been filled with sand and gravel to depths ranging from 50 to over 100 feet. These basins all provide underground storage which may be utilized to supplement the natural flow of the stream during dry periods. There are three major basins: the Pala Basin from Rincon to Monserate Narrows; the Bonsall Basin from Monserate Narrows to Bonsall Narrows and the Mission Basin from Bonsall Narrows to Oceanside From ... studies it seems probable that the underground storage in the Pala Basin is at least 20,000 acre-feet, in the Bonsall Basin 21,000 acre-feet, and in the Mission Basin 12,300 acre-feet."

Discussion

A general similarity between the watershed above the applicant's proposed point of diversion and the watershed tributary to Lake Henshaw suggests that runoff per square mile may be somewhat the same on the two watersheds. Since the former watershed scales roughly $81/640$ or 0.1265 square mile in extent and the latter is reported to yield an average of 0.289 cubic feet per second per square mile, the yield from the applicant's watershed may be of the order of roughly 0.1265×0.289 or 0.0366 cubic foot per second. The distribution of such flow according to Table 134, Department Bulletin No. 5 - "Flow in California Streams" should be about as follows:

Month	: Percentage of :		Average yield during month	
	: annual runoff :		in cfs	in gpm
January	33.9		.148	66.6
February	16.6		.073	32.9
March	24.3		.107	48.2
April	9.7		.043	19.3
May	6.9		.030	13.5
June	2.4		.011	5.0
July	1.0		.004	1.8
August	0.8		.004	1.8
September	0.2		.001	0.5
October	0.7		.003	1.4
November	0.9		.005	1.8
December	<u>2.6</u>		<u>.011</u>	<u>5.0</u>
Total	100.0			
Average			.0366	16.5

The record of flow below Pala diversion dam shows that most of the surface runoff from above that point on the river has been diverted or impounded. Plainly, therefore, no unappropriated water may be considered to exist in the reach above Pala diversion dam wherein surface flow is continuous.

The records of flow at Monserate Narrows and at Bonsall show that San Luis Rey River has received accretions which may or may not be subject to appropriation depending upon the extent of vested rights along the lower reaches, a matter however that is beside the point as far as Applicant Jones is concerned.

The record of flow at Oceanside suggests the existence at times of unappropriated water in the lower reaches of San Luis Rey River. No protestant against Application 14612 asserts use of water

below Oceanside and it may be presumed that water passing the point of measurement in that locality, or most of it, wastes into the Pacific Ocean. Such waste is reported as having occurred in 12 of the 19 years of record. It has occurred most often within periods extending from December to May, both inclusive; very seldom at other times. It has varied widely in amount and for at least 5 consecutive water years there appears to have been no wastage at all. It is of little significance to applications filed later than the applications contemplating development at Bonsall reservoir site, and mentioned in an earlier paragraph; it will probably not occur after the projects under those applications are in operation.

If flow passing the applicant's proposed point of diversion finds its way to San Luis River it appears certain from the evidence that that flow will be captured and utilized beneficially by some diverter from that stream, under some vested right. Such flow plainly is not subject to appropriation. If on the other hand the flow that the applicant has filed upon is lost by evapo-transpiration before reaching San Luis Rey River it is subject to appropriation; its diversion in the manner proposed could not injure any downstream user.

A prerequisite to the issuance of a permit is that there must be unappropriated water available to supply the applicant. The evidence in the matter at issue establishes that water exists but it does not establish that that water is unappropriated. Whether or not

the water is appropriated evidently depends on whether or not it reaches San Luis Rey River. On this point the evidence is inconclusive. As to surface flow the applicant testified both that it never reaches the river and that it has flowed all the way to the river. In this connection the United States Geological Survey map of the locality shows the source as an intermittent stream. As to sub-surface flow the applicant testified that while he has made no physical test it is his conclusion that that flow does not reach San Luis Rey River; basing that conclusion upon his observation that the water "disappears in the ground, then comes up again maybe a couple of times, then it quits altogether", and upon his further observation that conditions along the channel favor losses by evapo-transpiration. The applicant's assertion that the flow in the source does not reach San Luis Rey River evidently reflects belief rather than knowledge. The only other testimony as to whether the flow of the source reaches the river is that of Witness Cromwell, an experienced engineer, well acquainted with the general locality. Witness Cromwell states that in his opinion the flow of the tributaries reaches San Luis Rey River; yet he does not state flatly that the flow in the particular tributary filed upon by the applicant reaches San Luis Rey River. He testifies " ... it is my assumption that it can't go any other place. I don't know where it can go if it doesn't go down to the river." Yet he conceded on cross examination that trees along the source take up some of the water.

It thus is argued by the applicant that some of the water passing the proposed point of diversion is lost by evapo-transpiration and the possibility of such loss is conceded by an opposing party. The testimony does not establish what proportion of the flow is so lost. If the proportion lost is material, downstream users would be injured by the diversion that the applicant contemplates.

Summary and Conclusion

The applicant seeks to appropriate 50 gallons per minute from May 1 to November 15 and 12 acre-feet per annum, collected between November 15 and May 1, at a rate not to exceed 50 gallons per minute, from an unnamed tributary of San Luis Rey River in San Diego County. Seven parties protest that the proposed appropriation will further reduce the supplies to which they are entitled and which are already insufficient. The applicant answers the protestants by claiming that the water filed upon never reaches San Luis Rey River.

At a hearing in San Diego on June 25, 1953 testimony included a statement by the applicant that surface flow of his proposed source does not reach the river but that he is unsure as to what becomes of sub-surface flow; and statements by protestants' witnesses to the effect that Escondido Canal can and does divert up to 76 cubic feet per second, that there is no unappropriated water above the Escondido Canal intake, that water at applicant's proposed intake probably reaches

San Luis Rey River, that vegetation along applicant's proposed source may consume some of that water, that the Indians on Rincon Reservation use all the water that reaches them and would use more if it were available.

Other information considered includes records of flow at 5 points of measurement on San Luis Rey River, indicative of wastage of water into the ocean during winter and/or early spring of most years, very little and infrequent wastage at other seasons; information collected and action taken in connection with other applications to appropriate from San Luis Rey River; information published in Division Bulletins 48 and 48a and in Department Bulletin No. 5; Palomar Observatory Quadrangle, United States Geological Survey.

The circumstances summarized point to the conclusion that the existence of unappropriated water at the point at which the applicant seeks to appropriate has not been established by the hearing testimony or by information obtained from any other source. Since the existence of unappropriated water is a prerequisite to the issuance of a permit to appropriate it is the opinion of this office that Application 14612 is ineligible for approval and should therefore be denied.

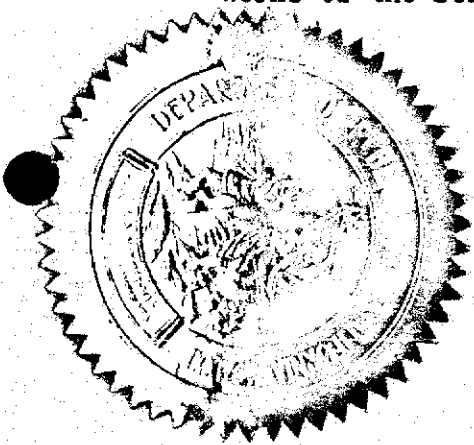
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ORDER

Application 14612 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 14612 be rejected and canceled 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 7th day of September, 1954



A. D. Edmonston

A. D. Edmonston
State Engineer