

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 15068 by Max C. Wurster to Appropriate
Water from an Unnamed Spring Tributary via Dowd Canyon to San
Francisquito Canyon in Los Angeles County for Domestic Purposes.

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Decision A. 15068 D. 808

Decided October 25, 1954

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In Attendance at Investigation Conducted by the Division of Water
Resources at the Site of the Proposed Appropriation on July 24,
1953:

Max C. Wurster

Applicant

Manuel Moss

President of the protestant
Rancho Green Valley Water 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 applicant seeks to appropriate 4250 gallons per day, year-round, from an unnamed spring located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T6N R14W, SBB&M. The spring is tributary via Dowd Canyon to San Francisquito Canyon, in Los Angeles County. The project includes a concrete dam 2 feet high by 4 feet long at the point of diversion and a 1-inch pipeline 500 feet long. The water is wanted for domestic use at a dwelling occupied by 4 people and for watering an appurtenant half-acre garden. The applicant states that he owns the place of use but that the proposed point of diversion is on government land.

Protest

The Rancho Green Valley Water Company, Inc., by J. Moss, its president, protests the application, alleging:

"These are head springs that are contributory to certain wells nearby that serve over 100 homes with water daily. Any further stoppage of water and detouring of these springs would jeopardize the supply of water now issued to the 100 families and hundreds of other property owners who intend to build in this area. There are water lines fronting Max Wurster's property and he is eligible to receive water if he so wishes."

The protestant claims a right to the use of water from the same source by virtue of riparian ownership and prior use. It claims that use has been continuous since 1925, over 25,000 gallons per day having been utilized, over 100 homes served. It states that

its point of diversion is located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T6N R14W, SBB&M, states that its protest may be disregarded and dismissed "in the event that water system goes dry or denied the right to connect thereto."

Answer

The applicant answers the protest by letter dated January 21, 1953. The letter contains, among others, the following statements:

"The natural flow of the unnamed spring was detoured in 1925. This spring is on government property and was previously used by the Mount Jupiter Water Company and has been abandoned since June, 1949, when it was condemned for public use by the Los Angeles County Health Authority. At the present time this spring is dirty; it runs into an old tank which is full of holes and thence into a 2-inch pipe which is broken. At present this leak is on the property of Hans A. Wurster. I intend to clean the spring and install new pipe."

"I do not believe the use of the spring would jeopardize the flow of water into wells of Rancho Green Valley Water Company which are approximately 1 mile below the spring. There are other wells and a spring between said spring and Rancho Green Valley Water Company wells None of these people protest my application."

"I ... own ... 0.63 acres of land on which I intend to start building a house for my family of 4 as soon as water is available. Also I intend to plant a one-half acre domestic garden"

"I have an easement to cross the property of Hans A. Wurster and a written easement from the Los Angeles County Road Department has been applied for to run the pipe approximately 231 feet along county road. I do not have to cross any other property."

Field Investigation

The applicant and the protestant with the approval of the Department having stipulated to the submittal of the application and protest upon the official records of the Department, a field investigation was conducted on July 24, 1953 by an engineer of the Division. The applicant was present and the protestant was represented during the investigation.

Records Relied Upon

Applications 10981, 11100, 14236, 15068 and all data and information on file therewith.

Information Secured by Field Investigation

Extracts from the report of the field investigation of July 24, 1953 are as follows:

"The source of the proposed diversion is the same as Spring No. 2 under Application 10981, Permit 6420, of the Rancho Green Valley Water Company. It is a developed seepage in shattered decomposed granite in a small draw on a steep northerly shoulder of Mount Jupiter."

"Mr. Wurster developed the spring for a predecessor of the Rancho Green Valley Water Company. It has a short tunnel about five feet by five feet in section by about six feet long with a six foot by four foot concrete bulk head across the entrance and a timber cover. From the spring about 140 feet of 1 inch pipe ... leads to an old dilapidated 7500 gallon galvanized tank."

"Flow was measured at the tank at 0.37 gallons per minute or about 535 gallons per day. Mr. Wurster stated that the flow from the spring was considerably below normal. Eight of the past nine precipitation seasons have been considerably below normal"

"Mr. Wurster owns about 0.63 acre of unimproved property that is outside of but contiguous to the lands served by the Water Company. He plans eventually to make the place his permanent home and desires water at present to grow trees on the place."

"The spring for the proposed appropriation is undoubtedly in a faulted area, so the size of the contributory area is not determinate. It lies above Spring No. 1 of protestant covered by Application 10981 and also above Andrew Wurster's spring, covered by Application 11100, License 3461, and further development of it would probably be reflected in a decrease of flow in the lower springs."

"The protestant has Application 10981, Permit 6420, covering three springs on the northerly slopes of Mount Jupiter. Also two wells near the confluence of Dowd and San Francisquito Canyons, about one mile westerly of the proposed diversion. The springs apparently have not been connected to the system since about 1948 . . . Their supply presently is from the two wells."

The report of the field investigation of July 24, 1953 states also that the protestant has applied to the California Public Utilities Commission for a certificate of convenience and necessity and then quotes from a report rendered by that agency upon Rancho Green Valley Water Company, dated May 22, 1953 as follows:

- "5. La Jolla Lodge Company, a corporation, was the original subdivider and recorder of the seven tracts comprising the service area . . .
- "6. The first installation of mains was reportedly made by William Leslie, an individual, in 1938. The applicant, Manuel Moss, purchased the water system in 1941. The water system was operated under the name of Mount Jupiter Water Company, a corporation, from 1944 to 1951.
- "7. The Company obtains its water supply from a well situated at the southerly end of Calle Cascada known as Bennett Well . . . It . . . produces 125 gallons per minute.

"8. A well owned by Mr. Manuel Moss, known as Lake Well is connected to the system for standby purposes. This well is ... equipped with a ... pump ... producing 100 G.P.M.

* * *

"11. There are 136 service connections and all are metered.

* * *

"2. Evidence of unsatisfactory service was manifest in some parts of the system. Sixty-eight consumers ... are furnished water through a 2-inch main"

The report of field investigation contains other statements as follows:

"The hearing (before the Commission) on the application was held on June 4, 1953, but the decision has not been rendered."

"The Bennett Well is on the cone about equal distance from the two channels and the Lake Well is on the right bank of Dowd Canyon. The watershed above the wells contains about 1750 acres in San Francisquito and 2430 acres in Dowd Canyon, it has a moderate heavy covering of brush and the average precipitation is about 18 inches. At the time of the investigation there was no surface flow in either stream above the wells but both canyons show evidence of underflow. Rising water appeared in Dowd Canyon, opposite Lake Well and attained a volume of about one-quarter cubic foot per second within a quarter of a mile downstream."

"Prior to a brush fire that burned most of the northerly portion of the watershed in 1933 and a flood in 1934, there was rising water in Dowd Canyon about one and one-half miles above the well. It was stated that the flood filled the area with sand and there has been no surface water since but willow and watergrass growth indicates that water is not far below the surface."

"The area is subdivided into about 1770 lots and Mr. Moss said most of them have been sold. He claims that there are 150 services at present and more houses are being constructed. Present use of water averages about 25,000 gallons per day during the summer season. Use will undoubtedly increase."

"There is no house on the applicant's property."

"The home of Hans Wurster is connected to the protestant's system."

"He has a temporary permit from the Road Department and the Forest Service apparently has intimated that right of access would be granted if water right is granted by the Division."

"The well is on his father's property and is noted in the inspection report of Application 11100."

"The protestant has a permit to the spring under Application 10981, Permit 6420, for 15,000 gallons per day. Mr. Wurster stated that he waited until he was sure that water had not been used for a period of three years before he made his application."

"It is doubtful that the spring can be developed to produce the 15,000 gallons per day under the present permit."

Information from Other Sources

Other applications to appropriate from the same or nearby sources are as follows:

Application 10981, Permit 6420, Rancho Green Valley, Inc. for 30,000 gallons per day, year-round, from springs designated as Spring No. 1, Spring No. 2 and Spring No. 3, all located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T6N R14W, SBB&M, for domestic and recreational purposes. The time within which to complete construction work and application of the water to beneficial use is under current extension to December 1, 1955. Of the 30,000 gallons per day sought not to exceed 15,000 are to be appropriated from Spring No. 1, 12,000 from Spring No. 2 and 15,000 from Spring No. 3. A report of an inspection on April 29, 1948, of the project under Application 10981 contains these statements:

"The source is three unnamed springs on the north slope of Mount Jupiter, lying from 50 to 200 feet above the valley floor of Dowd Canyon Spring No. 2 lies ... approximately 100 feet southeasterly of ... Spring No. 1

"At the time of inspection the combined captured flow of Springs No. 1 and No. 2 was approximately 2,000 gallons per day"

In the same report it is stated that the full capacity of the springs has not been developed. A report of a second inspection, made on June 22, 1950, sets forth in part:

"The flow of the springs was considerably below the flow previously reported and Mr. Estes (maintenance man) stated the flow was not over 10 per cent of normal."

"Springs No. 1 and No. 2 are presently not connected to the tank as there is disagreement as to the ownership of the property on which the tank is located."

"Precipitation in the area has been considerably below normal for over 5 years"

A report of a third inspection made on June 16, 1953, contains statements as follows:

"None of the springs were connected into the system and flow was not measured."

"It does not appear that water from the springs has been used for several years Water ... from springs No. 1 and No. 2 will require boosting."

"The name of the company has been changed from Mount Jupiter Mutual Water Company to Rancho Green Valley, Inc. with Mr. Moss remaining the principal stockholder. The company has an application to become a public utility pending ... and the decision of the commission should be forthcoming sometime this fall."

"Mr. Moss stated that after the certificate ... is received from the ... Commission ... the springs will again be connected into the system."

Application 11100, Permit 6469, License 3461, Andrew Wurster, 10,080

gallons per day, year-round, from an unnamed spring within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T6N, R14W, SBB&M, for domestic purposes including garden irrigation. The application was not protested. The spring is situated probably 100 feet northerly from the spring filed upon under Application 15068. Its yield on May 25, 1949, is reported to have been 1.04 gallons per minute; on an unstated day in July, 1945, 7.0 gallons per minute.

Application 14236, Permit 9104, United States - Angeles National Forest, 9700 gallons per day, year-round, from an unnamed spring within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T6N R14W, for domestic and recreational purposes and the irrigation of 3 acres. The spring in question appears to be located some 0.8 mile southeasterly from the spring filed upon under Application 15068. Application 14236 was protested by Rancho Green Valley Water Company and others. It was heard and, in due course, approved. Testimony by District Ranger Leland E. Berriman, United States Forest Service, at the hearing in the matter of Application 14236, included certain statements that are pertinent also to the matter of Application 15068, these being to the effect that the area tributary to the protestant's wells is 2400 acres in extent, of which 500 acres are in private ownership, the remainder being government land, that the drainage area has a light covering of chemise on the south exposed slopes and a medium covering on the north slopes, that elevations within the drainage area range from about 2975 to about 4500 feet, that rainfall for a 75 year period has averaged 18 inches, that of the Green Valley Water Company's two wells the upper

one, known as the Bennett well, is being pumped, that some water from the spring filed upon by the Forest Service would eventually reach the two wells mentioned if not intercepted, that some of the flow from the spring would be used by vegetation or would evaporate, that the water table was low in 1950 but has since risen 10 or 12 feet, that at the present time (February 27, 1952) it is some 20 feet lower than normal.

Discussion

The protestant's contention in its protest that the appropriation of 4250 gallons per day sought by the applicant would jeopardize the water supply serving 100 families is unsupported by the evidence. True, the ground slopes downward from the spring filed upon to the protestant's main sources of supply (Bennett Well and Lake Well) and that is an indication that ground water also moves from the vicinity of the spring to the vicinity of the wells. However, the distance between spring and wells scales some 0.9 mile, a distance that water may scarcely be expected to travel underground in a shorter time than usually elapses from the end of one rainy season to the beginning of the next. Furthermore, 4250 gallons per day, the amount sought by the applicant, is equivalent to but 4.75 acre-feet per year and the diversion and utilization of that amount in the manner proposed obviously would have but slight effect upon water table elevations prevalent 0.9 mile downstream in a widening valley.

While not mentioned by the protestant as a basis of objection, a deterrent to the unqualified approval of Application 15068 exists in the fact that the protestant already holds a permit to appropriate from the spring filed upon by the applicant. Evidence is lacking that the spring will yield as much as the two filings call for. While the applicant contends that the protestant has abandoned the spring as a source of supply, Mr. Moss, signer of the protest, is quoted by the investigator as stating in effect that the springs (of which the spring in question is one) will be connected into the protestant's system when a certain certificate (as a public utility) is received; that the protestant company's application for such certification is pending and that favorable action thereon is expected shortly. The protestant's permit to appropriate (Permit 6420) is under current extension to December 1, 1955. It covers an appropriation of 30,000 gallons per day of which not to exceed 12,000 gallons per day may be drawn from the spring from which Applicant Wurster seeks to appropriate. The facts that water from the spring in question has not been used for 3 years and/or that it was condemned for public use by a health authority, alleged in the applicant's answer to the protest, do not invalidate Permit 6420 or prevent the protestant from putting the project under that permit into full operation provided only that it does so within the allotted time or within such extension thereof as may, for good cause shown, be granted.

The elapsed time since Application 10981 was approved (August 10, 1945), the discontinuance of diversion from the spring after it had once been brought into operation and the statement that the resumption of diversion from the spring is contingent upon certain action by a public commission all suggest that further delay, perhaps considerable, may occur before the protestant water company again puts water from the spring in question to beneficial use.

Summary and Conclusions

The applicant seeks to appropriate 4,250 gallons per day, year-round, from a certain spring in Los Angeles County. The application is protested by Rancho Green Valley Water Company, which alleges that diversions from the sources filed upon would jeopardize the yield of 2 wells upon which protestant depends for the supply of water to 100 homes. The applicant asserts that water from the spring was once used by Mount Jupiter Water Company (protestant's predecessor), that use was discontinued in 1949 and that the spring was condemned as a source of supply for public use.

The field investigation of July 24, 1953 disclosed among other things that the spring filed upon by Applicant Wurster is the same spring as the one designated Spring No. 2 in Application 10981 Permit 6420 now standing in the name of Rancho Green Valley, Inc., that the spring has been developed but is not now in use, that it was

yielding 0.37 gallon per minute on the date of the investigation, that that figure may be less than normal, precipitation in recent years having been subnormal, that the spring apparently has not been connected with the protestant's water system since 1948, that the protestant's system is supplied by two wells - Bennett Well and Lake Well - situated about 1 mile westerly of the applicant's proposed diversion. According to the report of the same investigation, the protestant has applied to the California Public Utilities Commission for a certificate of convenience and necessity, the hearing before that agency was held on June 24, 1953, the decision has not been rendered.

The report of an inspection on June 16, 1953 of the project under Application 10981 Permit 6420 contains statements to the effect that none of the springs were at that time connected into the system, that amounts issuing from the springs therefore were not measured, that the company (Rancho Green Valley Inc.) is seeking certification as a public utility and that (according to Mr. Moss) when the certificate (as a public utility) is received the springs will again be connected into the system.

Other relevant circumstances are that the allegation that the diversion proposed by the applicant would affect the yield of the protestant's wells is not supported by evidence and that the time within which to complete construction and application of water to beneficial use under approved Application 10981 has been extended to December 1, 1955.

The circumstances point to the conclusion that the yield of the spring in question is insufficient to satisfy demands under both Application 10981 Permit 6420 and Application 15068, that diversions under Application 10981 Permit 6420 were begun but have been discontinued, that an unknown but possibly considerable time may elapse before diversion under that application is resumed and that until such diversion is resumed the spring waters may be taken and used in the manner proposed in Application 15068 with benefit to the holder thereof and without injury to the protestant Rancho Green Valley Water Company. In view of that conclusion it is the opinion of this office that Application 15068 should be approved and permit issued, subject to the usual terms and conditions and subject to a special term and condition emphasizing the subordination of Application 15068 to the prior filing on the same source under Application 10981 Permit 6420.

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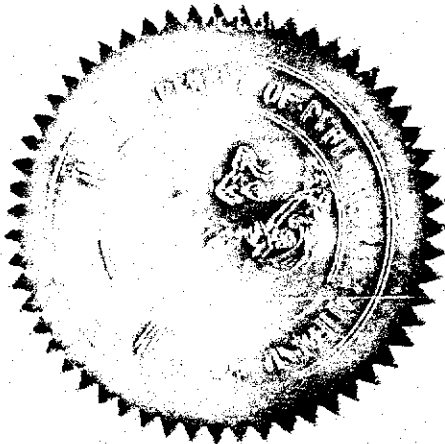
ORDER

Application 15068 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a field investigation having been conducted and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15068 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:

Issuance of this permit shall not operate to the prejudice of the prior right held by Rancho Green Valley, Inc., under Application 10981 Permit 6420.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 25th day of October, 1954.



A. D. Edmonston

A. D. Edmonston
State Engineer