

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

1283

In the Matter of Application 22539)
of Canebrake County Water District)
to Appropriate from Canebrake Wash) Decision D 1283
in San Diego County)

DECISION APPROVING APPLICATION IN PART

Substance of Application

Application 22539 was filed on August 3, 1966, by Canebrake County Water District for a permit to appropriate one cubic foot per second year-round from Canebrake Wash in San Diego County for municipal purposes. The point of diversion is within the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 4, T15S, R7E, SBB&M. The place of use described in the application includes all of Section 34, T14S, R7E, and the N $\frac{1}{2}$ of Section 3, T15S, R7E, SBB&M.

Protests having been filed, a hearing was held by the State Water Rights Board in San Diego on March 14, 1967.

Source and Existing Diversions

Canebrake Wash (hereinafter referred to as Canebrake Creek or "the creek") drains an area on the eastern slope of the Laguna Mountains in San Diego County. The

watershed above the applicant's proposed point of diversion is about 27 square miles.

Surface elevations in the watershed range from about 6,000 feet at the western portion to about 1,450 feet at the diversion point. Most of the watershed is mountainous, with steep slopes and desert-type vegetation except for sparsely wooded areas at the higher elevations.

For some three miles above the applicant's proposed diversion point the streambed crosses a gently sloping alluvial fan which terminates at the entrance to Canebrake Canyon. The applicant's proposed diversion point is located in this canyon. The canyon is formed by a cut through a ridge called Tierra Blanca Mountains.

Flow which appears in the canyon is apparently rising water caused by geologic formations resistant to erosion in the Tierra Blanca Mountains blocking the subsurface flow of water from the alluvial fan over which Canebrake Creek flows. This perennial rising water, to the extent it is not diverted for beneficial use, is either consumed by dense cane growth and other vegetation or percolates into the ground a short distance downstream.

A little less than one mile below the proposed point of diversion, Canebrake Creek emerges from the canyon into Carrizo Valley and from that point extends approximately one and one-half miles over the alluvial cone of the creek to join Vallecitos Creek, which drains Carrizo Valley in a southerly direction.

The lower canyon and the alluvial cone have been subdivided by the federal government into 5-acre tracts for desert homesites. One hundred and two such tracts have been created of which about 90 contain residences. Only seven people live in the area permanently. The rest of the houses are occupied occasionally on weekends and vacations, mostly by people from the vicinity of San Diego. Because of the high temperatures that prevail in the summer, occupancy is highest during the winter and early spring. Forty of the houses are connected with water from Canebrake Creek. Water from Canebrake Creek is not used for drinking, but water for this purpose is being hauled from outside the area.

The first application for a permit to appropriate water from Canebrake Creek for use on one of the 5-acre tracts was filed in 1941 by J. J. Sheridan, who about the same time also applied for a lease of this tract from the U. S. General Land Office. He subsequently constructed a ditch and pipeline which diverted water from the creek to the tract. In 1947 several other prospective lessees of the Government filed applications to appropriate water. Some of these secured leases in 1949 and water right permits were issued to them in 1950. Some of the lessees connected to the Sheridan pipeline. One of them, Thomas Hays, laid a new line to his tract from a point on Canebrake Creek upstream from the intake of the Sheridan line. Other

leaseholders filed for and received water right permits and licenses. A total of 54 such permits and licenses have been issued which are now in good standing. Twenty-eight persons connected to the Hays line under an agreement with him that required payment of \$200. The agreement also gave Hays the right to shut off the water supply of any user who failed to secure and retain a right from the State to divert water from Canebrake Creek at Hays' point of diversion. Eventually, all those with permits to divert from the creek, including those using the Sheridan or "Canyon" line, received permission from the State to divert from a common point which was located on government land in the lower canyon about three-fourths of a mile above its mouth. A concrete distribution box was constructed to which both lines were connected. Various persons who used the system cooperated in purchasing materials and performing labor as required to maintain and improve the diversion and distribution works.

As time went by, the flow of water in Canebrake Creek at the intake became less and in the summer of 1961 it dried up completely for a time.

In 1962 most of the water users combined to form the Canebrake Improvement Association to help with maintaining the water system and to improve the supply. Each member of the association paid \$13 plus \$10 annual dues and contributed labor as required.

During 1962 and 1963 members of the association debated the advantages of a single pipeline to serve the whole area and of transferring ownership and control of the water system to the association or to a similar agency which would represent all the users. Mr. Hays stated that he would not be willing to transfer his pipeline to an association of the water users because of the danger that if he did so the county would require chlorination of the water.

In 1962 the association purchased and installed a 3-inch sheet metal pipe from the distribution box for a distance of about 1,200 feet upstream to a place on land owned by Robert Crawford where water was flowing in the creek channel. An arrangement was discussed with Mr. Crawford for a lease of the portion of his land needed for the pipeline for \$558, which amount equaled \$18 for each of the 31 association members. Mr. Crawford was paid the \$558, but he and the association were not able to agree on terms for the lease and none was executed.

Many of the members were strongly opposed to paying Crawford anything and believed that the need for doing so could be avoided by developing a new source of water on government land either below or above Crawford's property. Sharp differences of opinion were expressed and at times heated discussions were held. Some members accused others of interfering with their water supply and personal antagonisms developed.

As the result of these differences of opinion, several of the water users withdrew from the association, including Mr. Hays. He negotiated a separate agreement with Crawford for an easement over the latter's property for the extended pipeline. The agreement provided for the payment to Crawford by Hays of \$1.50 a month. It provided that the same easement could be exercised by all persons authorized by Hays to use his pipeline so long as they retained the right to connect to the Hays pipeline, maintained in good standing with the State Water Rights Board their right to appropriate the water transported through the pipeline, and paid Crawford \$1.50 per month. The term of the easement was one year subject to annual renewal unless a 60-day notice of expiration or a change of terms was given.

Some of the other water users executed similar agreements. In 1963 these people and Hays filed petitions with the Board to add to the point of diversion authorized in their permits or licenses the place on Crawford's land at the end of the extended line. Mr. Hays, through his attorney, notified all persons who were connected to his line that within 30 days they would have to arrange for the change in point of diversion under their permits and licenses and for an easement from Mr. Crawford.

In the spring of 1964 an effort was made by association members to augment the flow of Canebrake Creek by

digging a lateral trench just below Crawford's boundary. This produced considerable water for a time, but within a few months the flow once again ceased and apparently there has been no sustained flow in the creek below Crawford's land since then, at least during the summer months.

In October 1964 the Board held a public hearing on the petition by Hays to change his point of diversion. The improvement association appeared in opposition to the change. In June 1965 the petition was granted, the Board finding that no water was available at the original point of diversion, that water was available at the place described in the petition, and that the change would not operate to the injury of any legal user of the water involved.

Since that time, those persons who filed petitions to make the same change in point of diversion have been granted permission to do so. These people are 19 in number (18 of whom are on the Hays line) and are the same ones who have signed agreements with Crawford for annual easements across his land at a cost to each of \$1.50 per month. They hold permits or licenses which authorize the diversion of a maximum of 7,350 gallons per day (gpd).

Those persons who take water from the Hays line and who have not filed petitions to change their authorized point of diversion to Crawford's land (which in turn requires an easement from Crawford) had their water shut off at one time by Mr. Hays, acting under authority of his

agreement with them which provides that they must maintain a right to divert water from the same place he does.

The existing method of diverting water from Canebrake Creek is clearly unsatisfactory. Permission to maintain a pipeline across Crawford's property is on a year-to-year basis and can be terminated by him at any time. The sheet metal pipe is temporary and will soon have to be replaced. No regulatory storage is provided except for a few hundred gallons at the distribution box which feeds into the Hays and Canyon lines. Apportionment of water in accordance with relative priorities of the rights cannot be readily accomplished because all the rights on one pipeline are not superior to all the rights on the other. No provision is made for prevention of contamination or for treatment of the water to make it suitable for domestic use.

The idea of forming a county water district as a means of resolving the differences of opinion among the water users, and providing a permanent and unified water system to serve all of those who use water from either the Hays or Canyon lines, was discussed in 1963 and 1964 and was recommended by the then legal counsel of the association. In 1965 the county board of supervisors authorized a formation election, which was held in December 1965. The vote was 28 to 2 in favor of formation and the district was thereafter duly organized and a board of directors was elected. The

district filed Application 22539, which is for a permit to divert water from Federal Water Reserve 107 a short distance above Crawford's land and upstream from the place of diversion authorized in existing permits and licenses. Protests were filed by seven water users from the Hays line (including Mr. Hays) and by Mr. Crawford. The seven collectively hold permits or licenses for a maximum diversion of 2,850 gpd.

Thirty permits and licenses have been assigned to the district. These collectively authorize the diversion of a maximum of 9,460 gpd. In addition, the owners of licenses authorizing a maximum of 2,200 gpd have designated the district as their agent to "extract, divert, store and deliver" to them all water to which they are entitled. Thus the district controls a little less than two-thirds of the existing rights for diversion from Canebrake Creek. Twenty property owners who do not have water rights have stated to the Board by letter that they are in favor of development of water by the district.

In November 1966 the district and 14 of the landowners and water users in the district filed an action in the Superior Court of San Diego County against Crawford, Hays, and three other persons, charging that the defendants had been wasteful in the use of water, deliberately taking more than they could use in an attempt to deprive plaintiffs of their rightful share of the water; that Crawford had entered into easements with some parties but had refused

to negotiate with plaintiffs; that defendants had stopped the flow of water on many occasions; and that defendants had broken and interfered with plaintiffs' water pipes. Plaintiffs also alleged that the road through Crawford's property was public but that Crawford had blocked it with a gate. Plaintiffs asked for a declaration of rights as between the parties concerning water of Canebrake Creek, for a declaration that the road is public, for damages and an injunction. A preliminary injunction was issued by the court pursuant to stipulation, restraining all parties from interfering with the flow of water originating on Federal Water Reserve 107. Trial of the action has not been held.

The foregoing summary of information in the Board's files concerning construction and operation of the present water system and efforts that have been made to provide a dependable supply of water to those who have invested in homesites in the Canebrake area, makes it abundantly clear to the Board that the existing situation should not be allowed to continue. The method selected by the majority of those concerned for solving their problem, to wit, the formation of a county water district with power to acquire the necessary water rights and other properties and to construct and operate a system that will serve water to all who apply on an equal basis, is proper and appears to be in the best interests of the community as a whole.

Water Supply and Unappropriated Water

No records of flow of Canebrake Creek are available other than occasional measurements made by personnel of the Board and by Mr. Crawford. These measurements vary from zero to over 200 gallons per minute at different places and times. Based upon measurements made by Crawford in 1966 of water flowing at the north boundary of his land, he estimates the average flow varies from a high of 20 gallons per minute in March to a low of 4 gallons per minute in July through September. Annual precipitation as measured at the Crawford ranch station between 1948 and 1965 ranged from 1.32 inches to 6.66 inches and averaged about 3.5 inches.

Because of the many variable factors involved, no accurate determination of the quantity of water which rises to the surface in Canebrake Canyon can be made. However, the availability of some water in excess of present use appears possible in relation to the probable precipitation on the watershed of from 1,800 to 10,000 acre-feet annually.

The total use under existing permits and licenses is not known. The applicant's engineer estimated the present water requirements on the basis of 50 gallons per capita per day at 50 cabins with an average occupancy of 3.5 persons. On this basis the total demand is 8,750 gpd or about 6 gallons per minute. If this use were continuous throughout the year, it would be about 10 acre-feet annually. However, since

most cabins are occupied for only short periods, usually on weekends, the actual use would be considerably less than the above quantities.

That water could be developed in excess of that which is now diverted, is clear from the record. The applicant proposes to develop this water, first, by intercepting the flow in Canebrake Canyon upstream from the principal area of cane growth. Thus, much of the water that now is lost through transpiration or percolation would be made available for appropriation. The applicant also proposes to make more water available for appropriation by providing sufficient regulatory storage to conserve water which is now wasted during periods of low demand and holding it over for use during times of high demand.

Mr. Crawford claims a riparian right to the use of water from Canebrake Creek. He testified that he intends to burn the cane and develop pasture for cattle in the canyon where it crosses his property downstream from the applicant's point of diversion. Mr. Crawford does not now make, and has not for many years made, any use of water downstream from the applicant's diversion point. The extent of his riparian right is somewhat obscured by the fact that water which comes to the surface in Canebrake Canyon is collected in a redwood box that has been constructed in the channel of the creek on the public water reserve a short

distance above the Crawford property. The water is then conveyed by a pipe which extends from the box down the creek channel to a point a foot or two above the boundary of Crawford's land. Water discharged from this pipe flows a few feet in the creekbed and is then picked up on Crawford's land by another pipe which carries it down the creekbed a distance of about 40 feet where it is discharged into a small basin in the creek channel which is the intake of the pipe which leads to the distribution box for the Hays and Canyon lines and which is the place at which some of those with permits or licenses are authorized to divert water. The record does not show how much of the water which is collected in the redwood box would reach Crawford's land without the aid of the pipe. A riparian owner's title to water begins only when it reaches his land and he has no right to go upstream above his land and divert water which would not naturally flow there (Miller & Lux v. Enterprise Canal & Land Co., 169 Cal. 415, 441; Duckworth v. Watsonville Water & Light Co., 150 Cal. 520, 525-526).

The laying of these pipes, which have the effect of conducting water from the redwood box on the public water reserve to the point at which certain of the owners of permits and licenses are authorized to divert water, makes it apparent that the primary diversion of these owners is from the redwood box and that the head of the pipe just inside

Crawford's boundary and the intake of the pipe leading to the distribution box are points of rediversion. Neither Crawford nor the other protestants presented evidence of their authority to maintain collection works or a pipeline on the public water reserve.

Conclusion

The Board finds that unappropriated water is available to supply the applicant, that the intended use is beneficial, and that the proposed appropriation will best develop, conserve, and utilize in the public interest the water of Canebrake Creek. The applicant has the legal power to acquire such existing water rights and rights-of-way over private property as are necessary to fulfillment of its purpose.

The quantity applied for, in cubic feet per second, exceeds the quantity which can reasonably be expected to be developed in the canyon.

An estimate was made at the hearing of a future population in the district of 2,000. At 75 gallons per capita per day this would be a maximum use of 150,000 gpd. Assuming most of the development would be cabins used principally on weekends, the use for the maximum week-- the period of use on which the Board bases licenses -- would be much less than 150,000 gpd.

Considering this and the limited supply of water available, the Board finds that the quantity of water to be allowed should be reduced to 0.2 cubic foot per second.

Since the applicant has received an assignment of certain permits and licenses and has been authorized to divert water as agent of the owners of certain other licenses, the permit to be issued to the applicant should provide that water diverted by applicant under its permit and under the other permits and licenses should not exceed a total of 0.2 cubic foot per second.

The applicant will be legally obligated to construct and operate its system so as not to damage those with prior permits and licenses. It must either complete acquisition of these rights or make some equitable arrangement to supply them with water. The first alternative appears to be the most practical since all water users in the area should be supplied from the same collection and distribution works on equal terms as members of the district. The Board should retain jurisdiction over the district's permit to impose such terms for the protection of prior rights as may be necessary and desirable in light of future circumstances.

The permit should also provide, in accordance with the request of the Department of Fish and Game:

For the purpose of wildlife preservation, permittee shall make available at all times a minimum of 100 gallons of water in a manner whereby said water can be used by wildlife at the point of diversion.

From the foregoing findings, the Board concludes that Application 22539 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following order.

ORDER

IT IS HEREBY ORDERED that Application 22539 be, and it is, approved in part, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.2 cubic foot per second by direct diversion to be diverted from January 1 to December 31 of each year.

2. The maximum quantity herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before June 1, 1968, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1970.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1971.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

8. Permittee shall allow representatives of the State Water Rights Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

9. The total quantity of water diverted by permittee under this permit and under other permits and licenses assigned to permittee or owned by persons for whom permittee is agent, shall not exceed 0.2 cubic foot per second.

10. For the purpose of wildlife preservation, permittee shall make available at all times a minimum of 100 gallons of water in a manner whereby said water can be used by wildlife at the point of diversion.

11. Issuance of this permit shall in no way be construed as conferring upon permittee right of access to

the point of diversion or a right to cross privately owned land.

12. The State Water Rights Board reserves jurisdiction over this permit for the purpose of imposing such terms for the protection of prior rights as may be appropriate in the event permittee does not acquire all of the previous permits and licenses that have been issued to appropriate water of Canebrake Creek.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California.

Dated: SEP 29 1967

/s/ George B. Maul
George B. Maul, Chairman

/s/ Ralph J. McGill
Ralph J. McGill, Member

/s/ W. A. Alexander
W. A. Alexander, Member