

Mr. Stoddard

BEFORE THE DIVISION OF WATER RESOURCES
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

In the Matter of Application 8877 by Lyne S. Rudy To Appropriate From Hollenbeck Creek a Tributary of Dulgers Creek and Otay River for Irrigation and Domestic Uses.

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Decision 8877 - D - 396

Decided - *December 24, 1936*

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APPEARANCES AT HEARING HELD DECEMBER 1, 1936.

For Applicant

Lyne S. Rudy

In propria persona

For Protestants

G. R. Daley and Otis T. Hollenbeck
City of San Diego

H. Ray Hoyer
H. B. Daniel, Asst. City Atty.

EXAMINER: Everett N. Bryan,
Supervising Hydraulic Engineer for Harold Conkling, Deputy in Charge of Water Rights.

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OPINION

GENERAL DESCRIPTION OF PROJECT

Application 8877 was filed on May 22, 1936. Lyne S. Rudy seeks thereunder to appropriate 0.05 cubic feet per second from Hollenbeck Creek, a tributary of Dulgers Creek and thence Otay River, for irrigation and domestic use, diversion to be made within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 18, Township 17 South, Range 8 East, S.B.B. & M. and use to be made within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 18. The use proposed involves the irrigation of some 8 acres and domestic use at a group of cabins and for stock.

PROTESTS

H. B. Daley protested the application upon the grounds that the use proposed would prevent the flow of Hollenbeck Creek to and upon a tract of approximately 10,000 acres belonging to him in the Jural Grant immediately below applicant, and that it would thereby interfere with his use for domestic, irrigation and stock watering purposes.

Olis Y. Hollenbeck protested the application upon the ground that the proposed appropriation would dry Hollenbeck Creek as it flows through his property immediately below applicant and thereby interfere with a use for domestic and irrigation purposes which was first made by his predecessors in interest about 1866 and which use has been continuous since that time.

The City of San Diego protested upon the ground that it has acquired appropriative rights to the full flow of Otay River at a point downstream from the applicant and has for many years used all the water of Otay River flowing at that point for the domestic supply of the City of San Diego, the flood waters being impounded in Lower Otay Reservoir.

HEARING HELD

Application 8577 having been completed, advertised, and protested, a hearing was called in accordance with the provisions of Section 1a of the Water Commission Act of which applicant and protestants were duly notified.

DISCUSSION

The showing of protestants Daley and Hollenbeck with respect to their use of water and the interference which might result from such an appropriation as that proposed under Application 8577 was inconclusive and need not be considered at this time for the reason that the action of the Division is properly governed by the showing of the City of San Diego.

This protestant presented certified copies of notices of appropriations, deeds, etc. to show that it had acquired appropriative rights with a priority of 1889 to a maximum of 2000 miners inches from North Fork of Otay River and 2000 miners inches from South Fork of Otay River. A reservoir known as Upper Otay with a capacity of 2800 acre feet has been constructed on North Fork and a reservoir of 56,300 acre feet capacity, known as Lower Otay, has been constructed on South Fork. Upper Otay Reservoir spills into Lower Otay which also regulates and conserves the waters brought in from Cottonwood Creek and the Morena and Barrett reservoirs of the City on Cottonwood Creek by the Duligura Conduit. The waters of these sources are commingled at Lower Otay Reservoir and from there distributed for municipal purposes in the City of San Diego.

It was the testimony of J. W. Williams, Assistant Engineer for the City's Bureau of Water Development, and this testimony was uncontroverted, that in only one year since 1916 has Lower Otay Reservoir spilled, and that in the remaining years the waters of Otay River above this reservoir have been fully conserved and diverted to useful purposes under the appropriations of the City referred to above. While it appears true as represented by applicant, that during considerable portions of each year the flow in Hellenbeck Creek does not continue on the surface past his proposed point of diversion down into Lower Otay Reservoir but is lost in the gravels only to reappear and disappear several times, nevertheless the conditions are such as testified to by Mr. Williams, that this surface and subsurface flow, if not diverted, finally reaches Lower Otay.

The estimated average annual yield of the Otay River watershed above Lower Otay Reservoir is 7650 acre feet. The reservoir capacity as indicated

above is 59100 acre feet or nearly eight times the estimated average yield. It will be seen therefore the storage and diversion facilities are ample, except in years of extraordinary flood, to fully conserve the waters of this course. This fact is substantiated by the records of the City which were introduced in support of its claim that there was no waste from Lower Otay Reservoir and therefore no unappropriated water in this course at the point of diversion proposed by applicant in the watershed some miles above Lower Otay.

CONCLUSION

The evidence presented at the hearing on December 1, 1934, indicates that in only one year since 1915 has there been any waste from Lower Otay Reservoir which is situated on the stream system some 8 or 10 miles below applicant's proposed point of diversion. The City of San Diego owns storage facilities on this watershed which have a capacity nearly eight times the average yield, and except in years of extraordinary flood conserves all the waters of this shed and diverts the same to beneficial use in the City of San Diego. Any diversion above the diversion facilities of the City reduces by a corresponding amount the quantity of water available to the city. Under the circumstances Application 8677 should be denied on the grounds of lack of unappropriated water. This is of course without prejudice to any claim of riparian right which may be asserted by applicant.

ORDER

Application 8677 to appropriate water from Hollenbeck Creek having been completed and advertised, protests having been filed against the approval thereof, a hearing having been held after due notice to the parties, and the Division of Water Resources being now fully advised in the premises

IT IS HEREBY ORDERED that Application 9577 be denied and that an order be entered rejecting and cancelling said application.

WITNESS my hand and the seal of the Department of Public Works, State of California, this 24th day of December . 1936.

EDWARD HYATT, State Engineer

(Seal)
MISSING

BY HAROLD CONKLING

Deputy