

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 11709 by Escondido Mutual Water Company to  
Appropriate Water from an Unnamed Creek Tributary to Escondido Creek and  
from an Unnamed Creek Tributary via Bear Valley Creek to Escondido Creek,  
both in San Diego County, for Domestic and Irrigation Purposes.

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Decision A. 11709 D. 669

Decided April 25, 1950

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APPEARANCES AT HEARING HELD AT SAN DIEGO ON FEBRUARY 15, 1950:

For the Applicant

Escondido Mutual Water  
Company

Eugene Glenn, Attorney  
Kenneth Q. Volk, Engineer  
E. H. Guyer, Secretary  
J. H. Houghtelin, Vice President

For the Protestants

Orpha R. Headington

No Appearance

Thomas E. Rees and  
Edward R. Rees

) No Appearance

Amy M. Crooks and  
Ray H. Crooks

) No Appearance

Ralph E. Starkey

No Appearance

William M. Pearson

No Appearance

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of  
Water Resources, Department of Public Works, for A. D. EDMONSTON, State  
Engineer.

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## OPINION

### General Description of the Project

The application contemplates an appropriation of 1800 acre feet per annum to be collected in storage between October 1 and May 1 of each season and ultimately used for domestic purposes and irrigation. Of the total amount applied for 1400 acre feet are to be diverted from an unnamed tributary to Escondido Creek at a point within the  $W\frac{1}{2}$   $NE\frac{1}{4}$  of Section 31, T 11 S, R 1 W, S.B.B.&M.; and 400 acre feet are to be diverted (at a rate not to exceed 50 cubic feet per second) from an unnamed tributary to Bear Valley Creek, which in turn is tributary to Escondido Creek, at a point within Lot 8 of the same Section 31. At the first mentioned point of diversion a rolled earth fill impounding dam is to be constructed, 96 feet high by 980 feet long which will create a reservoir 1500 acre feet in capacity and 48.5 acres in surface area. At the second mentioned point of diversion a concrete dam 8 feet high by 30 feet long will be provided and water therefrom will be conducted by an open, gravity conduit to the reservoir. Some 3600 lineal feet of 36 inch welded steel pipe will connect the reservoir with the applicant's present distribution system. The place of use is to be the service area of the applicant company, the gross and net acreages of which according to the application are 14,000 acres and 8,325 acres, respectively. It includes portions of Section 31, T 11 S, R 1 W, portions of Sections 6 and 7, T 12 S, R 1 W, and portions of Sections 1, 2, 11 and 12 of T 12 S, R 2 W, S.B.B.&M. It also includes the Rancho Rincon Del Diablo, the City of Escondido and a portion of the Rancho San Bernardo. The area to be irrigated includes 75 acres of alfalfa, 7500 acres of orchard,

700 acres of general crops and 50 acres of pasture. The irrigation season extends from about April 1 to about October 30. Another water right or source of supply is claimed by the applicant, i.e. 6000 acre feet from the flow of San Luis Rey River and 5000 acre feet purchased from Henshaw Reservoir.

### Protests

Twenty informal protests were submitted before Application 11709 was in form for advertising. The signers thereof were furnished protest blanks for execution and submittal in due course, at their option. As a result 4 of the original 20 submitted formal protests and one additional protest was received, making a total of 5 formal protests, the essence of which is as follows:

Orpha R. Headington protests that the proposed dam will hold back water which normally would flow into and replenish the underground basin underlying her property. She argues that this depletion would retard the agricultural development of her farm land and in dry years endanger the existence of crops. As to a water right she asserts that she has pumped all water used on her property, for 39 years. She states that irrigation usually begins between April 15 and May 1 and that she ordinarily pumps a total of 12 acre feet each year and uses it to irrigate a 4.5 acre orchard and 5.5 acres of vegetables and alfalfa. Her diversion point, she asserts, is located within Lot 5 of Block 160 of Rancho Rincon Del Diablo. She states that her protest may be disregarded if the applicant will desist from pumping.

Thomas E. Rees and Edward R. Rees allege that the applicant intends to pump water into the proposed reservoir from wells near the protestants' property which is in a different watershed. They argue

that such pumping endangers the well supplying them with water both for irrigation and for domestic purposes, which well they assert has been in use for over 16 years. They describe their diversion as being located within Lot 3 of Sunny View Orchards, and state that their protest may be disregarded and dismissed if the applicant will refrain from the pumping to which exception is taken.

Amy M. Crooks and Ray H. Crooks protest that the proposed dam will hold back water which normally would flow into and replenish the basin underlying their property. They assert that the applicant intends to pump into their reservoir from wells within the Escondido watershed and vicinity. They assert that they obtain their supply from wells, use having begun prior to 1912, and that they utilize it for domestic purposes, stock watering and the irrigation of 7 acres of citrus trees. They claim to have used 16 acre feet of water for irrigation and 280,000 gallons for domestic purposes each of the past several years. Their property is located, they state, approximately 1 mile southwest of the proposed dam site. They state that their protest may be disregarded and dismissed if the applicant agrees to refrain from pumping from the Escondido Valley and its vicinity.

Ralph E. Starkey protests that the proposed appropriation will result in a lowering of the ground water level and thereby diminish the supply reaching the well which supplies him with water for domestic purposes and irrigation. He states that his water supply has been in use since 1836, that his present use includes irrigation of 3 acres of pasture and  $1\frac{1}{2}$  acres of berries and garden, that his property is located within Lot 7, Block 156 of Rancho Rincon Del Diablo, and that his protest may be disregarded and dismissed if the applicant is denied the right to pump

water from Escondido Creek and tributaries.

William M. Pearson protests that the proposed dam will retard the replenishment of the ground water supply underlying his property. He claims a riparian right and the right of an overlying land owner and states that his property is located within Lot 2, Block 177 of the Rancho Rincol Del Diablo subdivision. He states that his protest may be disregarded and dismissed if the applicant agrees to stop pumping forever.

The applicant made no formal answer to any of the protests.

#### Hearing Held in Accordance with the Water Code

Application 11709 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 Article 733(a) of the California Administrative Code on Wednesday, February 15, 1950, 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.

#### General Discussion

Prior to the hearing, the protests of Ralph E. Starkey, Thomas E. Rees and Edward R. Rees, and William M. Pearson were withdrawn by letters dated January 24, February 6 and February 8, 1950, respectively. Standing against the application at the time of the hearing were but 2 formal protests, i.e. those of Protestant Headington and of the Protestants Crooks. In response to a notice of hearing mailed to Protestant Headington on January 19, 1950 that protestant stated that her ranch had been sold to one John West of Escondido. A copy of the notice of hearing was mailed to Mr. West on January 31 and the returned registry receipt indicates that he received it on February 2. A notice of hearing was

also mailed to the Protestants Crooks and the returned registry receipt indicates that that notice also was received. From the fact that nothing further has been heard from any of the protestants and the fact that none of them entered an appearance at the hearing it is concluded that they do not desire to maintain their protests further.

Apart from the withdrawal of the 3 protests and the omission of the remaining protestants to attend the hearing or to press their protests by correspondence, none of the protests appears sufficiently substantial to operate as a bar to the approval of Application 11709. The protestants object mainly that the proposed dam will hold back water which normally would flow into and replenish the underground basin underlying their property. They also state that their protests may be disregarded and dismissed if the applicant will refrain from certain pumping. Undoubtedly the interruption of runoff tributary to the applicants' proposed dams will prevent that particular runoff from reaching the basin. It does not follow however that the protestants will be substantially injured by that interruption. In addition to the 4.2 square miles of watershed which the applicant proposes to exploit, some 5.7 square miles of apparently equally productive watershed are tributary to the basin above the properties of Protestants Headington (or West) and Crooks which lie farthest upstream and therefore supposedly would be affected most. Since runoff from the 4.2 square miles tributary to the proposed dam has averaged upward of 500 acre feet per annum (Applicants Hearing Exhibit #2) the 5.7 square miles remaining available to the protestants should contribute more than enough to meet their relatively lesser requirements. Even should ground water levels recede somewhat as a result of the proposed development it is a well established principle that such recession is not necessarily a

bar to the approval of an application to appropriate at points upstream. The protestants' objections to alleged pumping operations by the applicant do not constitute sufficient grounds of protest. Application 11709 contemplates diversion at 2 designated points only - the two dam sites - consequently the matter of diversions at other locations by pumping or otherwise is irrelevant.

Due to the non-appearance of protestants at the hearing the latter resolved itself into a presentation, by the applicant's representatives, of the applicant's project. That project appears meritorious and the appropriation upon which it is based does not appear to be in conflict with existing developments downstream. The hydrologic data presented indicates that the watershed may be expected to yield the 1800 acre feet applied for in about 1 year out of 8 and that average seasonal yield may approximate 523 acre feet. The runoff that the applicant proposes to collect by the two projected dams is surplus to the extent that it is unessential to the satisfaction of the protestants' asserted rights. The latter in a normal year may be supposed to be more than satisfied by the yield from portions of the watershed not commanded by the applicant's proposed dams.

#### Summary and Conclusions

Unappropriated water at times exists in the source from which appropriation is sought under Application 11709. Such water may be taken and used as proposed in that application without injury to other users. The application should be approved, subject to the usual terms and conditions.

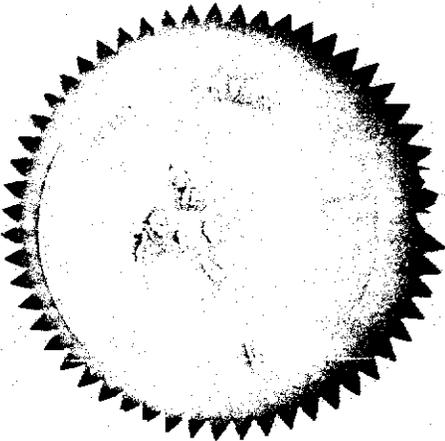
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ORDER

Application 11709 for a permit to appropriate water 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 11709 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 25th day of April, 1950.



*A. D. Edmonston*

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A. D. Edmonston  
State Engineer.