

Opinion

BEFORE THE DIVISION OF WATER RIGHTS
Department of Public Works
State of California

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IN THE MATTER OF APPLICATION NUMBER 3101 OF WILLIAM M. CLINGAN
TO APPROPRIATE FROM UNNAMED SPRINGS IN SANTA BARBARA COUNTY
FOR AGRICULTURAL PURPOSES

DECISION NO. 3101. D-41
Decided June 25, 1924.

APPEARANCES AT HEARING JUNE 3, 1924:

For Applicant:	None.
For Protestant:	None.
Examiner:	Edward Hyatt, Jr.

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O P I N I O N

On October 27, 1922, William M. Clingan filed his application No. 3101 for a permit to appropriate unappropriated water from unnamed springs in Santa Barbara County for use for irrigation. Under this application it is sought to appropriate 0.017 cubic feet per second for the irrigation of two acres in Sections 23 and 27, T 5 N, R 26 W, S. B. M. Thereafter a protest was filed by Laguna Blanca Water Company through its Attorney, Archibald M. Johnsen, to which protest applicant made answer in writing. In due course the matter of this application came on for hearing before the Division of Water Rights.

Neither applicant nor protestant appeared at the hearing and both have indicated their desire that decision for or against approval of the application be made on the basis of information submitted prior to the hearing.

Protestant's contention is that as a public utility it is entitled

to use water from San Jose Creek, to which the springs specified are tributary, which rights cover the maximum flow of that creek and are both riparian and appropriative in character. Under their claimed rights beneficial use of water from San Jose Creek has been made since before 1900 up to 1917.

Applicant's answer to protest alleges in effect that protestant's right has lapsed through non-use for at least five years. This answer further states that due to geologic formation between the springs and San Jose Creek it is impossible that the flow of the creek be affected by flow from the springs as a continuous ^{porous} sandstone formation isolates the springs from the creek. Applicant's statement in one regard is confirmed by information from the United States Forest Service which states, "There is no surface flow from the springs applied for."

It is further noted that the entire controversy is situated in the same watershed and that the appropriation of 1100 gallons per day would probably not appreciably affect protestants on this account.

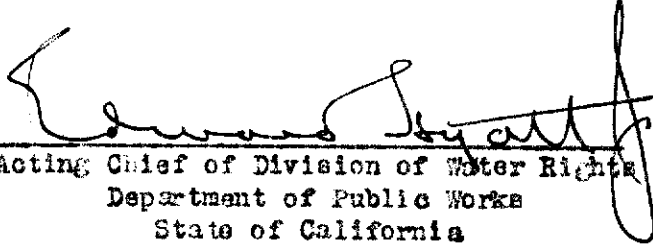
It is further noted that protestant has made no claim to beneficial use of the water since 1917, which is in effect acquiescence with applicant's claim that protestant's right to use water has lapsed from non-usage. It is therefore concluded that consummation of this application cannot injure protestant in the exercise of any right which he has made known to the Division of Water Rights.

ORDER

Application 3101 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, a protest having been filed, a public hearing having been held and the Division of Water Rights having fully considered all evidence filed by applicant and protestant in the matter,

IT IS ORDERED, that Application Number 3101 be approved
and that a permit be granted the applicant subject to such of the usual
terms and conditions as may be appropriate.

Dated at Sacramento, California, this 25th day of June,
1924.



Acting Chief of Division of Water Rights
Department of Public Works
State of California

JOY:MY