

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

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In the Matter of Application 5959 of the County of Los Angeles to appropriate from Two Unnamed Springs tributary to Mescal Creek and Two Unnamed Springs tributary to Swartout Creek in Los Angeles County for Domestic Purposes; Application 5962 of the County of Los Angeles to appropriate from Seven Unnamed Springs Tributary to Mescal Creek in Los Angeles County for Domestic Purposes; and Application 6442 of Paul L. Holtz to appropriate from Underground Waters of Mescal Creek in Los Angeles County for Irrigation and Domestic Purposes.

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DECISION A. 5959, 5962, 6442, D 285

Decided - *April 20, 1931*

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APPEARANCES AT HEARING HELD AT LOS ANGELES, MARCH 6, 1931.

For Applicants

County of Los Angeles

J. H. O'Connor, Ernest Purdum
and John Rockhold

Paul L. Holtz

No appearance

For Protestants

Harriet L. Worthington
S. B. Wright, et al.

No appearance
Albert Sidney Brown

EXAMINER: Everett N. Bryan, Hydraulic Engineer, Division of Water Resources, Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF THE APPLICATIONS

Application 5959 was filed June 29, 1928, by the County of Los Angeles. It proposes appropriations from four springs as follows:

<u>Source</u>	<u>Tributary to</u>	<u>Amount</u>	<u>Point of Diversion</u>
Spring No. 1	Mescal Creek	0.30 c.f.s.	SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 2, T3N, R8W, S.B.B. & M.
" " 2	" "	0.03 c.f.s.	SW $\frac{1}{4}$ NW $\frac{1}{4}$ " " " "
" " 3	Swartout Creek	0.03 c.f.s.	SE $\frac{1}{4}$ NW $\frac{1}{4}$ " " " "
" " 4	" "	0.04 c.f.s.	SE $\frac{1}{4}$ NW $\frac{1}{4}$ " " " "

The applicant proposes to divert the water throughout the entire year for domestic purposes for public camp sites on 520 acres of land within Sections 2 and 5, T 3 N, R 8 W, S.B.B. & M.

The application was protested by Harriet L. Worthington.

Application 5962 was filed June 29, 1928, by the County of Los Angeles

It proposes appropriations from seven springs tributary to Mescal Creek as follows:

<u>Source</u>	<u>Amount</u>	<u>Point of Diversion</u>
Spring No. 6	0.03 c.f.s.	NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 3, T 3 N, R 8 W, S.B.B. & M.
" " 7	0.02 c.f.s.	NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 33, T 4 N, R 8 W, "
" " 8	0.30 c.f.s.	NE $\frac{1}{4}$ SE $\frac{1}{4}$ " " " "
" " 10	0.30 c.f.s.	SW $\frac{1}{4}$ NE $\frac{1}{4}$ " " " "
" " 11	0.30 c.f.s.	SW $\frac{1}{4}$ NE $\frac{1}{4}$ " " " "
" " 12)	0.35 c.f.s.	SW $\frac{1}{4}$ NW $\frac{1}{4}$ " " " "
" " 13)		SW $\frac{1}{4}$ NW $\frac{1}{4}$ " " " "

The applicant proposes to divert the water throughout the entire year for domestic and recreational purposes on 1500 acres within Section 3, T 3 N, R 8 W, and Sections 29, 32, 33 and 34, T 4 N, R 8 W, S.B.B. & M. The application was protested by Harriet L. Worthington.

Application 6442 of Paul L. Holtz was filed on September 20, 1929.

It proposes an appropriation of 0.37 cubic foot per second from Mescal Creek throughout the entire year for irrigation and domestic purposes on 30 acres of land within NW $\frac{1}{4}$ of Section 15, T 4 N, R 8 W, S.B.B. & M. The point of diversion is within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 21, T 4 N, R 8 W, S.B.B. & M. The application was protested by S. B. Wright, Edward A. Eberle and T. B. Winnett and by Harriet L. Worthington.

PROTESTS

Harriet L. Worthington

Under Application 4780, Permit 2788, Miss Harriet Worthington has been granted the privilege of diverting 0.25 cubic foot per second from Mescal

Creek at a point within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 3, T 4 N, R 8 W, S.B.E. & M. for irrigation and domestic purposes and alleges in effect that the proposed appropriation under Applications 5959 and 5962 of the County of Los Angeles and Application 6442 of P. L. Holtz will deprive her of the water to which she is entitled.

S. B. Wright, Edward Eberle and T. B. Winnett.

These protestants claim appropriative rights initiated prior to the effective date of the Water Commission Act to divert from Mescal Creek at points within Section 21, T 4 N, R 8 W, S.B.E. & M. and allege in effect that the approval of Application 6442 will deprive them of water reasonably needed for useful and beneficial purposes upon lands within T 4 N, R 8 W, and particularly on lands within the NW $\frac{1}{4}$ of Section 4 of said township and range.

HEARING HELD IN ACCORDANCE WITH SECTION 1a
OF THE WATER COMMISSION ACT

Applications 5959, 5962 and 6442 were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources and being protested were set for a public hearing in accordance with Section 1a of the Water Commission Act on March 5, 1931, at 2:00 o'clock P.M. in Room 1026 Associated Realty Building, Los Angeles, California. Of this hearing, applicants and protestants were duly notified.

PHYSIOGRAPHY AND HYDROGRAPHY

Mescal Creek to which certain of the springs named as the sources of appropriation in Applications 5959 and 5962 are tributary and which is the source of proposed appropriation in Application 6442, rises on the northerly slope of the San Antonio Mountains in the vicinity of Section 2,

T 3 N, R 8 W, S.E.E. & M. at an elevation of about 6800 feet above sea level, flows northwesterly for a distance of about two miles and thence northerly about four or five miles to the place where it debouches upon the Mojave Desert at an elevation of about 4,000 feet. (See U.S.G.S. San Antonio Quadrangle).

From information obtained at the hearing it appears that from a point within the South one-half of Section 28, T 4 N, R 8 W, to a point approximately three-quarters of a mile south of the south line of Section 3, T 4 N, R 8 W, Mescal Creek lies within a heavily wooded canyon on a rocky stream bed varying in width from 50 to 200 or 300 feet wide. From this point to a point about three-quarters of a mile north of the south line of Section 3, T 4 N, R 8 W, or approximately to the northerly boundary line of Harriet L. Worthington's property the channel of Mescal Creek broadens into a wide open wash rather rocky with brush and juniper trees scattered here and there along its sides.

According to Application 5959 Springs 1 and 2 were described as being tributary to Mescal Creek but from information gathered at the hearing it appears that of the four springs named therein, Spring No. 1 is tributary to Mescal Creek, and the other three springs are tributary to Swartout Creek. From the San Antonio Quadrangle of the U.S.G.S. Spring No. 2 appears to be just about on the divide between the Mescal Creek watershed which slopes northwesterly and the Swartout Valley watershed which slopes southeasterly.

Springs 6, 7, 8, 10, 11, 12 and 13 named as the sources of appropriation in Application 5962 are all tributary to Mescal Creek and with

the exception of Spring 6 are in the immediate vicinity of Jackson Lake which is within the Los Angeles County Park grounds.

Use of Water by Harriet L. Worthington

Application 4780 of Harriet L. Worthington was filed September 21, 1925, and approved by issuance of Permit 2788 on May 9, 1927, allowing an appropriation of 0.25 cubic foot per second from about March 1st to about November 15th of each season for irrigation and domestic purposes and throughout the remainder of the year as required for domestic purposes. Construction work was commenced but a freshet destroyed the headgate and ditch which necessitated reconstruction of the diversion works. This office has been informed by Miss Worthington that the headgate and main ditch had been rebuilt but no laterals had been constructed due to lack of finances and that no use had been made of the water except for domestic purposes. Under date of November 21, 1930, an extension of time was granted until December 1, 1933, within which to apply the water to complete beneficial use under Application 4780, Permit 2788.

Mr. Rockhold, County Surveyor, stated at the hearing that upon his visit to the property of Miss Worthington on February 17, 1931, he found water flowing across Fort Tejon Road which passes through and across her lands. Apparently some effort had been made to lead the storm water into a sump which was connected by pipe lines to two cisterns; no land was under cultivation and there was no indication of a canal except one which was not clearly defined leading to a parcel of land which had the appearance of having been cleared some three or four years ago.

Mr. J. Buford Wright testified that he had seen no one on the premises since 1926 although he had passed the place four or five times a

year and at the present time there was no sign of habitation. He stated that there had been no recent cultivation and that the soil was too "gravelly" to be fertile. He stated that there were two dilapidated headgates which were unusable and that there was apparently no reason for their existence as the stream passed on both sides of them.

Mr. Harry Schenck testified that on February 16, 1931 there was no water within 200 feet of the headgates and water was passing down the road in front of Miss Worthington's place. On February 23, 1931, he again visited the place at which time water had ceased to flow at the headgates and was sinking into the ground about one-half mile above or about one mile from Miss Worthington's cisterns. He stated that there was no defined channel within a quarter or one-half mile of the headgates and no definite channels led from the headgates.

WATER WHICH COUNTY SEEKS TO APPROPRIATE NOT
AVAILABLE FOR USE OF PROTESTANT

The testimony presented at the hearing clearly indicated that a surface connection between the springs tributary to Mescal Creek and the water which Miss Worthington has appropriated or seeks to appropriate, exists only at times when freshets pass down the canyon at which time there is ample water for the use of the protestant.

That no water is available for her use after June or July is admitted by the protestant in a letter to this office dated November 8, 1929, and from the testimony presented at the hearing by Mr. Schenck and referred to above, it would appear that the flow past Miss Worthington's property ceased at a much earlier date.

In the event that the waters of the springs in question were allowed to pass down the stream bed it appears entirely clear that such waters would either be entirely lost by evaporation and deep percolation or travel so slowly underground that it would be replenished by the storms of the succeeding winter before reaching the protestants point of diversion.

The attorney representing S. B. Wright, et al., who divert from Mescal Creek at a point about half way between the springs from which the County seeks to appropriate and the point of diversion described in Application 4780, Permit 2788 of Miss Worthington, expressed himself as believing that the proposed diversion of the County would not interfere in any way with their use of water. (Transcript p. 35.)

From the testimony presented at the hearing and the fact that Miss Worthington was not present to offer any evidence in support of her contention, thereby failing to support the burden of proof appropriate to a moving party, it is the opinion of this office that her protest should be dismissed.

CERTAIN APPROVED APPLICATIONS OF THE COUNTY TO BE
WITHDRAWN ON APPROVAL OF APPLICATIONS 5959 and 5962

Under Applications 3867, 3872, 3873, 3874 and 3875, Permits 2200, 2205, 2206, 2207 and 2208 the County of Los Angeles has acquired the privilege of diverting 0.448 cubic foot per second from springs tributary to Mescal Creek and it is understood that in the event Applications 5959 and 5962 are approved the above numbered permits will be withdrawn.

USE OF WATER BY S. B. WRIGHT, et al. - PROTESTANTS
AGAINST THE APPROVAL OF APPLICATION 6442

S. B. Wright, et al. claim an appropriative right initiated in 1897 to divert water from Mescal Canyon at a point within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$

of Section 21, T 4 N, R 8 W, S.E.B. & M. for use on lands within the NW $\frac{1}{4}$ Section 4, T 4 N, R 8 W, S.E.B. & M. Testimony presented at the hearing indicated that continuous use has been made of the water since the right was initiated and as the surface flow had become deficient in recent years they had endeavored to divert and utilize the subsurface flow by cleaning out an old tunnel and shaft previously constructed by one Alexander Montaine, their predecessor in interest, which tunnel and shaft had been filled up as a result of a cloud burst in 1927. The rehabilitation of the old shaft and tunnel was commenced in May 1929 and 110 feet of open trench and 226 feet of tunnel has been excavated.

In March 1930 it became necessary for Mr. Wright and Mr. Eberle to enjoin Mr. Anderson, brother-in-law of Mr. Holtz, and his agents from interfering with their water rights and a hearing was held in July 1930 in the Superior Court of Los Angeles County. As a result of the hearing, and insofar as we are informed the judgment was final, it was decreed by the Court that the plaintiffs S. B. Wright and Edward A. Eberle had a prior right to divert 700 miners inches of water from Mescal Creek at their point of diversion within Section 21, T 4 N, R 8 W, S.E.B. & M., as against the defendant, Mr. Anderson, and the defendant was perpetually restrained and enjoined from interfering with the rights of the plaintiffs in and to the use of the waters of Mescal Creek, both from surface or underground flow therein. It was further ordered that any act of the defendant, his agents, servants, or employees in endeavoring to appropriate waters from Mescal Creek at any point above the plaintiffs' point of diversion would be an act of molestation and interference with the right of the plaintiffs and the defendant, his agents, servants, and employees and each of them were restrained and enjoined from so doing.

As Mr. Holtz is a brother-in-law of Mr. Anderson and he proposes to divert water from Mescal Creek at a point about one-half mile above the intake of S. B. Wright, et al. for use on lands which apparently belong to Mr. Anderson he is probably affected by the Decree.

Mr. Holtz failed to appear at the hearing in support of his application which may be interpreted as a recognition on his part of the futility of proceeding with the proposed project.

From the testimony presented at the hearing it appears that at times during the winter and spring months there are freshets or flood flows which pass beyond the protestants points of diversion to the Mojave Desert. These freshets however are infrequent and of short duration and a project entirely dependent thereon would not, in our opinion be feasible.

In the event that the proposed diversion of Mr. Holtz had been located below the diversion point of Mr. S. B. Wright, et al., it is possible that Application 6442 might have received more favorable consideration as the applicant would not then have been in a position to violate the Court Decree or harass and molest the protestants but since this is not the case we incline to the view that Application 6442 should be denied.

CONCLUSION

The uses to which the applicant, County of Los Angeles, proposes to put the water under Applications 5959 and 5962 are useful and beneficial ones, and as it has been shown that the waters which it is proposed to divert thereunder do not contribute to the waters which Miss Worthington seeks to appropriate except possibly at such times as there is an abundance of water at her point of diversion, it is the opinion of this office that Applications 5959 and 5962 should be approved.

Relative to Application 6442 of Paul L. Holtz we are of the opinion that there is not a sufficient amount of unappropriated water available in the source without interfering with the rights of lower appropriators, to justify its approval and therefore Application 6442 should be cancelled.

O R D E R

Applications 5959, 5962 and 6442 for permits 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 Division of Water Resources now being fully informed in the premises;

IT IS HEREBY ORDERED that said Applications 5959 and 5962 be approved and that permits be issued thereon subject to the usual terms and conditions, and

IT IS FURTHER ORDERED that Application 6442 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works, of the State of California, this *20th* day of *April* 1931.

EDWARD HYATT, State Engineer

BY *Harold Conkling*
Deputy

