

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

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In the Matter of Application 6785 of B. F. Porter Estate
to appropriate from Mormon Canyon Creek, a tributary
of San Fernando Valley in Los Angeles County for
Domestic and Agricultural Purposes.

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DECISION A 6785 D-300

Decided: *December 9, 1931*

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APPEARANCES AT HEARING HELD AT LOS ANGELES, NOVEMBER 17, 1931.

For Applicant

B. F. Porter Estate

No appearance

For Protestant

Chester W. Brown

M. A. Kline of the firm of
Andrews & Andrews, Attorneys,
Los Angeles, California.

EXAMINER: Everett M. 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

DESCRIPTION OF PROJECT

Application 6785 of the B. F. Porter Estate was filed on September 2, 1930, seeking an appropriation of 0.50 cubic foot per second from Mormon Canyon Creek, tributary to San Fernando Valley in Los Angeles County throughout the year for domestic and irrigation purposes. It was proposed to divert the water by pumping at a point within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 32, T 3 N, R 16 W, S.E.B. & M. and the water was to be used for domestic purposes and the irrigation of 40 acres in said Section 32.

DESCRIPTION OF PROTEST

The application was protested November 3, 1930, by Chester W. Brown, a land owner upon the stream immediately adjacent to the E. F. Porter Estate property, upon the ground that he had prior to 1923 developed and used by diversion at a point below the proposed diversion point of applicant, all of the normal flow of Browns Canyon Creek during the irrigation season and that there was therefore no water subject to appropriation.

APPLICATIONS DULY COMPLETED, ADVERTISED, ETC.

Application 6785 was duly completed and advertised in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources, was protested, and a hearing set thereon in accordance with the provisions of Section 1a of the Water Commission Act of which hearing applicant and protestant received due notice. This hearing was held on November 17, 1931, and the matter is now fully submitted and ready for action.

APPLICANT FAILS TO SUPPORT BURDEN APPROPRIATE TO MOVING PARTY

Action on the protest was continued from time to time throughout a period of approximately one year upon a showing that applicant and protestant hoped to adjust the matter between themselves without hearing. There having been no showing of progress in the matter notices of hearing were forwarded on October 22, 1931. To this notice applicant's attorneys responded under date of October 29, 1931, advising that applicant would attend the hearing which had been set for November 17, 1931. On November 13th however, applicant advised that there would be no appearance on its behalf, and there has been since that time no showing of cause for failure to appear.

Protestant Brown appeared in proper time and testified that he had developed and used all the normal flow of Mormon Canyon Creek during the

irrigation season since prior to 1923 in the irrigation of some 30 acres and for domestic purposes. He testified that his diversion installation had a capacity of 55 gallons per minute which could readily be increased to double that amount, that during the normal irrigation period he could only operate his pumping plant 12 hours of each day because of lack of water, that he had failed to further increase his irrigated acreage dependent upon the stream not because of lack of desire for such increase, or because of lack of further acreage susceptible of irrigation development, but because of the limited water supply, and that the development proposed by applicant would deprive him of water to which he was rightfully entitled as a riparian owner.

It appears from the testimony of protestant that unappropriated water is not available for a development such as that proposed by applicant and inasmuch as applicant failed to either appear at the hearing or make a showing of cause for failure to appear and support the burden appropriate to a moving party, it is our opinion that Application 6785 should be denied upon the ground of lack of unappropriated water.

O R D E R

Application 6785 having been filed, completed, and advertised, a protest thereto having been received, a hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 6785 be denied.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 9th day of December 1931.

EDWARD HYATT, State Engineer

By Harold Conkling
Deputy

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