

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

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In the Matter of Application 7144 of Truman K. Temple to
Appropriate Water from Mescal Creek in Los Angeles
County for Irrigation and Domestic Purposes.

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DECISION A. 7144 D-329

Decided

September 15, 1932

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APPEARANCES AT HEARING HELD AT LOS ANGELES, JULY 21, 1932.

For Applicant

Truman K. Temple

In propria persona

For Protestant

Harriet L. Worthington

In propria persona

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, 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 APPLICATION 7144

Application 7144 was filed by Truman K. Temple on December 12, 1931.
Under the application it is proposed to divert 3 cubic feet per second through-
out the entire year from Mescal Creek, tributary to the Mojave Desert in Los
Angeles County for irrigation and domestic purposes on 120 acres of land within
Section 15, T 4 N, R 8 W, and 80 acres within Section 10, T 4 N, R 8 W, S.B.B.&M.
The point of diversion is described as being within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section
21, T 4 N, R 8 W, S.B.B.&M. The application was protested by Harriet L.
Worthington.

PROTEST

Harriet L. Worthington claims a right to the use of water from Mescal Creek, which right is based upon Application 4780, Permit 2788, and alleges in effect that if the proposed appropriation is granted there would be insufficient water for her use.

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

Application 7144 was 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 was set for a public hearing in accordance with Section 1a of the Water Commission Act on July 21, 1932, at 10:00 o'clock A. M. in Room 803 California State Building, Los Angeles, California. Of this hearing applicant and protestant were duly notified.

PHYSIOGRAPHY AND HYDROGRAPHY

Mescal Creek the source of the proposed appropriation rises on the northerly slope of the San Antonio Mountains in the vicinity of Section 2, T 3 N, R 8 W, S.B.B.&M. at an elevation of about 6,800 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 a former hearing (Decision A. 5959, 5962, 6442 D. 285) 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. 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.

PRIOR RIGHTS TO APPROPRIATE FROM MESCAL CREEK

S. B. Wright, et al. (Circle Mountain Cattle Company)

S. B. Wright, et al. claim an appropriative right initiated in 1897 to divert water from Mescal Creek 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.B.B.&M. for use on lands within the NW $\frac{1}{4}$ of Section 4, T 4 N, R 8 W, S.B.B.&M. These interests known as the Circle Mountain Cattle Company under Application 939, Permit 427, License 168, also have a right to divert 0.49 of a cubic foot per second from Mescal Creek from about April 1st to about June 15th of each season for the irrigation of 39 acres within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 4, T 4 N, R 8 W, S.B.B.&M.

In March, 1930, it became necessary for Mr. Wright, et al. to enjoin a Mr. Anderson, an upper user, from interfering with their rights and as a result of a hearing before the Superior Court of Los Angeles County it was decreed by the Court that S. B. Wright, et al. had a prior right to divert 700 miners inches of water at their point of diversion within Section 21, T 4 N, R 8 W, S.B.B.&M. as against Mr. Anderson and the defendant was perpetually restrained and enjoined from interfering with the rights of the plaintiffs and to the use of the waters of Mescal Creek.

Mr. Paul L. Holtz, a brother-in-law of Mr. Anderson, filed Application 6442 to appropriate 0.37 of a cubic foot per second at a point above the intake of the Circle Mountain Cattle Company but this application was rejected by the Division after hearing not so much because of lack of unappropriated

water but because it appeared (1) that the land which it was proposed to serve belonged to Mr. Anderson against whom a decree had been entered and was therefore affected by the Decree of the Superior Court above mentioned, (2) that there was a lack of seriousness on the part of applicant in that he failed to appear in support of his application at the hearing, and (3) that the appropriation as proposed at a point immediately above the point of diversion of Circle Mountain Cattle Company would probably lead to undue interference with its rights. It was the conclusion at that time that had the diversion point been below rather than above the Circle Mountain Cattle Company favorable action upon Mr. Holtz' application might have been in order.

Harriet L. Worthington

Miss Harriet L. Worthington under Application 4780, Permit 2788 was granted the privilege of diverting 0.25 of a cubic foot per second from Mescal Creek to be diverted from about March 1st to about November 15th of each season for the irrigation of 20 acres of land ^{and} throughout the entire year as required for domestic purposes. Her point of diversion is located on Mescal Creek at a point within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 3, T 4 N, R 8 W, S.B.B.&M. about two miles below the applicant's proposed point of diversion.

County of Los Angeles

Under Applications 5959 and 5962, Permits 3699 and 3702, the County of Los Angeles has the privilege of diverting an aggregate of 1.63 cubic feet per second throughout the year from nine springs located near the headwaters of Mescal Creek.

USE OF WATER BY PROTESTANT

The only user of water from Mescal Creek below applicant is Miss Harriet L. Worthington, the protestant. Her Application 4780 was filed

September 21, 1925, and approved on May 9, 1927, by issuance of Permit 2788. Construction work was commenced but a freshet destroyed the headgate and ditch which necessitated the reconstruction of the diversion works. In order to afford Miss Worthington an opportunity to complete her construction and use an extension of time has been granted until December 1, 1933.

Testimony presented at the hearing indicated that the only use of water made by Miss Worthington during the last five years was for domestic purposes which water was obtained from the Creek near her residence and collected in two cisterns. Miss Worthington did not know whether her headgate was still in place and no attempt has been made to use the water this year.

It also appears that during a year of normal runoff such as 1927 the waters of Mescal Creek flowed for a distance of seven miles through the desert during the spring months and during the year 1932, from the latter part of February until the latter part of June there was a continuous stream passing Miss Worthington's headgate the flow of which varied from about 700 miners inches to about 100 miners inches. Last year the water started to flow past the headgate of the Circle Mountain Cattle Company about the middle of March and continued until about the last of June the maximum flow being about 300 miners inches.

At a previous hearing held in connection with Applications 5959, 5962 and 6442 on March 5, 1931, Mr. Rockhold, County Surveyor of Los Angeles County, testified that on his visit to the property of Miss Worthington on February 17, 1931, he found water flowing across the Fort Tejon Road which passes through and across her lands, that apparently some effort had been made to lead the storm water into a sump which was connected by pipe lines to two cisterns, that no land was under cultivation and that 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 3 or 4 years ago.

Mr. J. Buford Wright at the same hearing testified that he had seen no one on the premises since 1926 although he had passed the place four or five times a year, that although there were two dilapidated headgates there was apparently no reason for their existence as the stream passed on both sides of them.

Mr. Harry Schenck also 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 definite channel within a quarter of a mile or one-half mile of the headgates and no definite channel led from the headgates.

CONCLUSION

The uses to which the applicant proposes to put the water are useful and beneficial ones and it has been shown that at times there is unappropriated water in Mescal Creek which flows past the intake of Miss Worthington and on to the desert sands without being applied to beneficial use. The burden will be upon the applicant to allow sufficient water to flow past his intake to permit Miss Worthington to divert the water to which she is entitled and the applicant fully realizes his responsibility in this connection. It is therefore our opinion that Application 7144 should be approved.

As the season during which water is available for diversion by the applicant fluctuates considerably due to the variation in natural runoff and the operations of the upstream appropriators it is not deemed advisable to reduce the season of diversion. A limitation of season of use may be determined at time of license action.

O R D E R

Application 7144 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a public hearing having been held, and the Division of Water Resources now being fully informed in the premises:

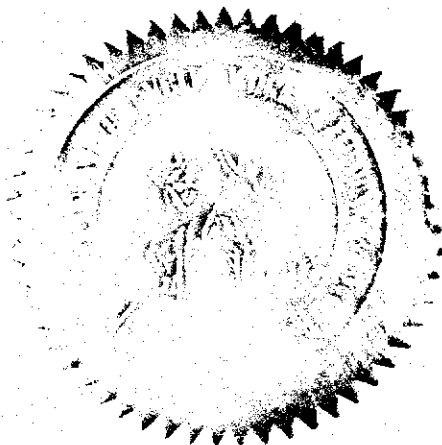
IT IS HEREBY ORDERED that Application 7144 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this *Fifteenth* day of *September* 1932.

EDWARD HYATT, State Engineer

BY *Harold Corbrey*
Deputy

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