

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

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In the Matter of Application 1483 of San Dimas Water Company,  
Application 2418 of San Dimas Land and Water Company,  
Applications 2433 and 2437 of A. L. Sonderregger, and  
Application 4583 of Glendora Consolidated Mutual  
Irrigating Company to appropriate from San  
Dimas Creek, Tributary to San Gabriel  
River in Los Angeles County for  
Agricultural and Domestic Purposes

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DECISION A. 1483, 2418, 2433, 2437, 4583 D - 379

Decided *July 8, 1935*

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APPEARANCES AT HEARING HELD AT LOS ANGELES, AUGUST 2, 1928.

For Applicants and Protestants

San Dimas Water Company	James A. Anderson
San Dimas Land and Water Company	Ward Chapman and J.S. Fraser
A. L. Sonderregger	In propria persona
Glendora Consolidated Mutual Irrigating Company	Walter F. Haas

For Protestants

Columbia Land and Water Company	Walter F. Haas
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EXAMINER: Harold Conkling, Chief of the Division of Water Rights, assisted  
by George B. Gleason, Assistant Hydraulic Engineer.

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APPEARANCES AT HEARING HELD AT LOS ANGELES, MARCH 25, 1930

For Applicants and Protestants

San Dimas Water Company	G. J. Anderson
San Dimas Land and Water Company	Mr. Rozick and Ward Chapman
A. L. Sonderregger	In propria persona
Glendora Consolidated Mutual Irrigating Company	Walter F. Haas

For Protestants

Columbia Land and Water Company	Walter F. Haas
Glendora Independent Water Company	K. Q. Volk
Warren D. and Joseph W. Isenberg	No appearance

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 THE APPLICATIONS

#### Application 1483

Application 1483 was filed October 11, 1919, by San Dimas Water Company. It proposes an appropriation of 4,000 acre feet per annum to be diverted throughout the entire year at a maximum rate of 11.25 cubic feet per second either from natural flow of San Dimas Canyon or regulated flow thereof made available by release from storage collected in the Los Angeles County Flood Control Reservoir from September 1st to July 1st of each season, impounding dam of which is located within the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 24, T 1 N, R 9 W, S.B.B.M. After release from storage the waters will flow down San Dimas Creek to a point within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 25, T 1 N, R 9 W, where they will be rediverted to the place of use consisting of 1998.44 acres within the addition to San Jose Rancho, portion of San Jose Rancho and a portion of Rancho La Fuente where the water will be used for agricultural and domestic purposes. Water will also be used for domestic purposes within the San Dimas and Charter Oaks District. Application 1483 was protested by the following:

Glendora Irrigating Company and Glendora Mutual Water Co.  
Columbia Land and Water Company  
San Dimas Land and Water Company  
Warren D. and Joseph W. Isenberg

#### Application 2418

Application 2418 was filed July 2, 1921, by San Dimas Land and Water Company. It proposes an appropriation of 3 cubic feet per second from San Dimas Canyon to be diverted from about April 15th to about December 15th of each season, the total amount diverted in any one season not

to exceed 1,450 acre feet. The point of diversion is within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 25, T 1 N, R 9 W, S.B.B.&M. The water is to be used for irrigation purposes on 600.68 acres of land within Sections 25 and 36, T 1 N, R 9 W, Sections 1, 2 and 11, T 1 S, R 9 W, and Section 6, T 1 S, R 8 W, S.B.B.&M. Application 2418 was protested by Warren D. and Joseph W. Isenberg.

Application 2433

Application 2433 was filed July 7, 1921, by A. L. Sonderegger. It proposes an appropriation of 0.10 of a cubic foot per second of the waters of San Dimas Creek, either natural flow or regulated flow resulting from the operation of a flood control reservoir proposed by Los Angeles County Flood Control District with an impounding dam located within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 24, T 1 N, R 9 W, S.B.B.&M., the total diversion under the application not to exceed 15 acre feet per annum. The point of diversion is within the NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 25, T 1 N, R 9 W, S.B.B.&M. Diversion from natural flow will be made from November 1st to April 1st of each season and diversion from regulated flow collected in flood control reservoir between November 1st and April 1st of each season will be made as same may become available. The water is to be used for agricultural and domestic purposes on 10 acre tract of land within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 25, T 1 N, R 9 W, S.B.B.&M. which will be subdivided into country homesites which will require a continuous supply. Application 2433 was protested by the following:

San Dimas Water Company  
San Dimas Land and Water Company  
Warren D. and Joseph W. Isenberg

Application 2887

Application 2887 was filed June 19, 1922, by J. W. Sullivan and assigned on July 6, 1925, to A. L. Sonderegger. Notice of assignment was

filed in this office on July 13, 1925. It proposes an appropriation of 0.4 cubic foot per second from San Dimas Creek, either natural flow or regulated flow resulting from the operation of a flood control reservoir proposed by Los Angeles County Flood Control District with an impounding dam located within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  Section 24, T 1 N, R 9 W, S.B.B.&M., the total amount of water diverted under the application not to exceed 200 acre feet per annum. Diversion from natural flow will be made from December 1st to June 1st and diversion from regulated flow collected in the flood control reservoir between December 1st and June 1st of each season will be made as same may become available. The point of diversion is located within the NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 25, T 1 N, R 9 W, S.B.B.&M. The water is to be used for domestic and agricultural purposes on 70 acres of land within the NE $\frac{1}{4}$  of Section 25, T 1 N, R 9 W, S.B.B.&M. which will be subdivided into country homesites which will require a continuous supply. Application 2887 was protested by the following:

San Dimas Water Company  
San Dimas Land and Water Company  
Warren D. and Joseph W. Isenberg

Application 4583

Application 4583 was filed May 14, 1925, by Glendora Consolidated Mutual Irrigating Company. It proposes an appropriation of 10 cubic feet per second by direct diversion throughout the entire year and 3,000 acre feet per annum of storage to be collected between November 1st and May 1st of each season from San Dimas Creek either natural flow or regulated flow resulting from the operation of the San Dimas Flood Control Reservoir now existing in Section 24, T 1 N, R 9 W, S.B.B.&M. It is proposed to store the 3,000 acre feet underground through wells at a maximum rate of 10 cubic feet per second. No spreading on the surface is contemplated. The point

of direct diversion and diversion to storage is within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 35, T 1 N, R 9 W, S.B.B.&M. The points of rediversion of stored water are at the existing wells of the applicant within the S $\frac{1}{2}$  of Section 35, T 1 N, R 9 W, S.B.B.&M., and within the NE $\frac{1}{4}$  of Sections 2 and 3, T 1 S, R 9 W, S.B.B.&M. It is proposed to use the water for domestic and irrigation purposes upon 2461.95 acres of land within T 1 N, R 9 and 10 W, and T 1 S, R 9 W, S.B.B.&M. Application 4583 was protested by the following:

San Dimas Water Company  
Warren D. and Joseph W. Isenberg

#### PROTESTS

The San Dimas Land and Water Company claims a right to the first 30 inches of water measured under a 4 inch pressure in San Dimas Creek at its point of diversion in Section 5, T 1 N, R 9 W, S.B.B.&M. which right has been adjudged by court decree and alleges in effect that all water which is discharged from the reservoir of the Los Angeles County Flood Control District whether impounded flood waters or natural flow is governed by the decree and should be divided accordingly, that all applications to appropriate from San Dimas Creek should be subordinate to its Application 2418 and that any additional appropriation or diversion above would impair its rights.

The San Dimas Water Company claims rights as follows:

- (1) An appropriative right of 20 years standing to 450 inches (4 inch pressure) in excess of the right to the first 30 inches claimed by San Dimas Land and Water Company.
- (2) Right by virtue of ownership to develop and take all waters underlying its lands in San Dimas Basin.
- (3) Application 1483 now pending before the Division.

- (4) Right to storm water stored in San Dimas Reservoir by virtue of contract under which dam was built.

It alleges in effect that the diversions proposed under Applications 2433, 2887 and 4583 would reduce the flow in San Dimas Creek and diminish the underground waters of San Dimas wash to its injury.

The Glendora Consolidated Mutual Irrigating Company (formerly Glendora Irrigating Company and Glendora Mutual Water Company), Columbia Land and Water Company and Glendora Independent Water Company obtain their water supply from the underground waters of San Dimas wash. These companies allege in effect that the waters which applicants are seeking to divert are not subject to appropriation under the Water Commission Act, that the entire stream flow is necessary to replenish the underground water of San Dimas wash and that the overlying property owners and those who already have vested rights are entitled to any benefit which may inure from the release of the flood waters released from storage.

Warren D. and Joseph W. Isenberg claim the ownership of  $E\frac{1}{2}$  of  $SE\frac{1}{4}$  of  $NW\frac{1}{2}$  Section 5, T 1 S, R 9 W, S.B.B.&M. upon which a well has been dug. This property overlies the San Dimas wash and protestants allege in effect that should water from San Dimas Canyon be diverted as proposed it would prevent the replenishment of their ground water supply.

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

Applications 1483, 2418, 2433, 2887 and 4583 were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights (Name changed to Division of Water Resources on August 14, 1929) and being protested were set for public hearing in accordance with Section 1a of the Water Commission Act

on August 2, 1928, at 10:00 o'clock A.M. in Room 1026 Associated Realty Building, Los Angeles, California, and reconvened and continued on March 25, 1930, at the same hour and place. Of this hearing, applicants and record protestants were duly notified.

No testimony was submitted at the hearing; the matter was informally discussed however and it was agreed that if the applicants and protestants could not come to an agreement briefs would be filed with this office and cross-served upon the several interests. Apparently no adjustment was possible and briefs were filed as follows:

<u>Date Filed</u>	<u>Name</u>	<u>Title</u>
3/14/31	A. L. Sonderegger	Opening Brief
3/18/31	San Dimas Water Company	Opening Memorandum
3/18/31	San Dimas Land & Water Company	Opening Brief
3/18/31	Glendora Consolidated Mutual Irr. Co.) Columbia Land and Water Company )	Opening Brief
3/30/31	Glendora Consolidated Mutual Irr. Co.) Columbia Land and Water Company ) Glendora Independent Water Company )	Reply Brief
4/ 1/31	San Dimas Water Company	Reply Memorandum

Action has been delayed from time to time at the request of the interested parties in order to afford them an opportunity to come to some agreement as to the division of the waters made available by storage in the San Dimas Reservoir but the Division feels that further delay would serve no purpose.

#### HYDROGRAPHY AND PHYSICGRAPHY

San Dimas Creek rises in the southerly part of T 2 N, R 8 W, S.B.B.&M. at an elevation of about 4,250 feet above sea level and flows

in a general southwesterly direction a distance of about  $7\frac{1}{2}$  miles to its junction with the valley of the San Gabriel river. The entire watershed comprises an area of approximately 25 square miles of which about 13.3 square miles are above the valley floor.

The creek is torrential in character and exceedingly variable and uncertain in flow and at times the flood flows have caused considerable damage to the lands of riparian owners bordering thereupon.

The following table taken from Bulletin 7 of the Division of Water Rights (page 113) indicates the monthly and seasonal flow during the seasons 1916-17 to 1927-28.



MONTHLY RUNOFF IN ACRE FEET, OF SAN DIMAS CREEK, NEAR SAN DIMAS

(Drainage Area 18.3 square miles)

Year	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Total
1916-1917	--	--	961	627	728	573	371	536	170	60.9	25.3	17.3	3,250
1917-1918	17.2	48.2	96.5	107	240	1560	293	158	90.4	20.3	13.3	14.3	2,690
1918-1919	59.4	108	146	123	182	215	108	65.2	17.9	5.7	5.2	3.9	1,060
1919-1920	24.0	80.3	173	95.3	347	1330	492	218	86.1	12.4	1.2	0.8	2,960
1920-1921	32.0	56.3	106	392	179	1150	246	615	201	30.1	4.9	--	3,070
1921-1922	--	--	2470	1700	4990	1760	1150	633	468	290	274	216	14,000
1922-1923	117	348	938	353	376	239	94	216	160	163	39.4	15.6	2,000
1923-1924	35	86.9	94.1	118	98.6	95.3	64.9	161	127	60.0	3.1	--	980
1924-1925	--	33.3	53.4	109	55.4	76.9	91.0	132	45.6	7.4	--	--	660
1925-1926	6.8	10.1	46.1	41.8	60.0	101	601	232	299	297	361	445	2,480
1926-1927	119	31.7	147	86.5	2330	579	330	203	163	17.7	6.1	2.0	4,140
1927-1928	8.0	35.1	118	105	48.3	31.4	53.0	82.4	97.6	59.0	7.4	7.1	652
Mean													3,120

The average discharge for the period of record (3,320 acre feet) is estimated to be about 695

of the long time average (4800 acre feet - See page 48 of Bulletin #7).

The San Dimas basin which is one of the minor basins bordering on the main San Gabriel basin, comprises an area of approximately 1.7 square miles, occupying the territory north of San Jose Hills and south of Glendora Hills and lying between the town of LaVerne on the east and an indefinite line extending southwesterly from the western end of Glendora Hills to San Jose Hills, on the west.

The geology of the San Dimas basin is rather complex and has not been fully determined. Apparently the basin is divided into two or more smaller basins which have been eroded to depths of some 500 feet below the present level of the valley and have become filled with alluvial material. It appears that wells have been drilled to depths of nearly 800 feet without encountering bedrock and yield comparatively small quantities of water. San Dimas basin is supplied in part by percolation from the surface flow of San Dimas Creek which, except in the case of larger floods, is entirely absorbed before crossing the margin of the basin.

#### INVESTIGATION BY DIVISION

From December 1923 until April 1925 the Division conducted an investigation of the water supply in San Dimas basin and from July 1923 to September 1928 an investigation of the entire San Gabriel Valley. The summary of these investigations is set forth in Bulletin 7 of the Division of Water Rights.

According to Bulletin 7 it was concluded that the season 1926-27 gave as good a basis for estimating the present shortage or surplus in the various basins and sub-basins of the San Gabriel drainage area as could be found with the data at hand, as during this season the mountain runoff was 87% of normal and the rainfall on the valley floor was 119% of normal. Un-

controllable waste was 38,000 acre feet which was only slightly above the 35,000 acre feet estimated to be the long time average.

As to the conditions in the San Dimas basin during this season the following is quoted from bulletin 7, (Page 79).

"San Dimas Basin

Area	10,614 acres		
Average precipitation	21.4 "		
Water reaching basin			Acre Feet
		Average Annual	Supply in
		for period	1926-27
		1925-26	
Mountain runoff		6,700	6,240
Precipitation on valley floor		12,900	21,500
From hills		<u>1,350</u>	<u>1,330</u>
		26,600	29,200

Change in underground storage 1926-27 - plus 4,000 acre feet

Status of Lands - 1926

	Valley	%	Hill	Foothill	Total	%
Irrigated	7,539	69.6	135	38	7,613	48.7
Irrigable	1,935	18.2	1,706	729	4,370	28.0
Non irrigable	<u>1,230</u>	<u>12.2</u>	<u>833</u>	<u>1,435</u>	<u>2,644</u>	<u>23.5</u>
	10,614	100.0	2,760	2,263	15,627	100.0

Acreage Using Water

1904	3,940
1912	6,633
1926	7,613

"The supply to the basin 1926-27 was 2600 acre feet in excess of normal and underground storage increased 4,000 acre feet indicating an average surplus of 1,400 acre feet. Because of formations in San Dimas basin the interpretation of ground water movement in terms of acre feet is especially subject to inaccuracy. That part of San Dimas basin east of Foothill Boulevard and in San Dimas wash is badly over-pumped. This is not true as to the remainder of the basin particularly that part west and south of San Dimas wash. Reservoirs now constructed will enable future waste to be held and some addition will be made to the average supply. Difficulty of locating water bearing strata over a large part of the basin has prevented and will prevent full use of the local underground water supplies."



covered all claims to the surface flow of San Dimas Creek until the flood control reservoir was constructed. As soon as it appeared that the San Dimas Water Company was endeavoring to obtain the use of waters stored in the reservoir the San Dimas Land and Water Company immediately became concerned lest the applicant should obtain water to which it claimed it was entitled under the decree.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

The Los Angeles County Flood Control District was created by act of the legislature (Statutes of 1915 Chapter 755, page 1502) for the purpose of providing "for the control of the flood and storm waters of said district, and to conserve such waters for beneficial and useful purposes by spreading, storing, retaining or causing to percolate into the soil within said district, or to save or conserve in any manner, all or any of such waters, and to protect from damage from such flood or storm waters the harbors, waterways, public highways and property in said district."

The act also provides that in so controlling the flood and storm waters the district is not to divert waters to the detriment of vested owners without compensation to them as provided by law.

There is no authorization in the act whereunder the district may acquire water rights or apply water to beneficial use itself. Since an appropriation of water consists not only in taking the water under control but also subsequently applying it to beneficial use, the district is not authorized to appropriate water under the act but merely to take temporary possession thereof. The only way in which an appropriative right may have been initiated subsequent to December 19, 1914, the effective date of the Water Commission Act was by the filing of an application with

this office. The Flood Control District has no applications pending before the Division to appropriate water, nor does the District claim the ownership of any flood waters which are collected.

One of the streams, the floods of which it was proposed to control, is San Dimas Creek and in 1922 pursuant to the act under which the District was created, a dam was constructed in San Dimas Canyon having a capacity of some 1500 acre feet. The lands upon which the dam was constructed and the lands which were to be submerged belong to the San Dimas Water Company which entered into an agreement with the Flood Control District whereby in return for a perpetual easement for flood control works, there should be provided at the Company's expense, a discharge pipe through the dam equipped with a control gate by which water would be made available to the Company for irrigation purposes.

Pursuant to the agreement a 16 inch pipe equipped with a control gate has been installed through the dam just below the regular opening which is about 8 feet by 10 feet in size. The 16 inch pipe is about 30 feet above the streambed. There is also a tunnel in the hillside at the west abutment at an elevation below the streambed by means of which the reservoir may be completely emptied.

The release of the water stored in the reservoir is left entirely in control of the Flood Control District, the Company by contract merely reserving the right to have these waters released to it for irrigation purposes without interfering with the primary object and intent for which the reservoir was constructed. Should water be released and the reservoir be operated to the injury of the lower users it would appear that adequate recourse would be available by appropriate court action.

It appears that soon after the reservoir was completed the Board of Supervisors of Los Angeles County instructed the Chief Engineer of the Flood Control District to maintain the gates of the reservoir wide open until March 15th of each year and subsequently to use his judgment in the operation of the reservoir with the aim of conserving all water possible.

According to information supplied by San Dimas Land and Water Company the amount of water in storage on the first of May from 1923 to 1926 varied from a minimum of 100.5 acre feet to a maximum of 1379.3 acre feet on May 1, 1926. On August 1, 1926, the reservoir content was 844.4 acre feet. From that time until the season of 1934-35 the carry-over as of April 1st never exceeded 353 acre feet. On May 10, 1925, there were 1157 acre feet in storage which according to the Company would suffice to furnish substantial flow during the irrigation season as the inflow on that day was 1.5 cubic feet per second. According to the flood control records the inflow on May 1, 1932, was 2.0 cubic feet per second, on May 1, 1933, 1 cubic foot per second, and on May 1, 1934, was 1.2 cubic feet per second.

WATER STORED BY FLOOD CONTROL DISTRICT AND  
SUBSEQUENTLY RELEASED IS SUBJECT TO APPROPRIATION

It is an undisputed fact that at times the flood flows of San Dimas Creek find their way beyond the confines of San Dimas basin and combine with waters which ultimately reach the ocean by way of the San Gabriel River. In fact, these flood flows have at times been so devastating to the lands and villages bordering upon the stream that the Los Angeles County Flood Control District has constructed a dam in San Dimas Canyon for the purpose of "ironing out" the flood crests.

Once the flood waters are retained they cease to become a part of the natural flow of the stream and when released are an artificial increment to the natural flow of the period of such release.

In the opinion upon which Decision 192 was based, this office held in connection with Application 3348 by the Waterford Irrigation District, that

"water of one season or period of time is not water of another season or period of time, that water made to flow in another season or period of time is not natural flow of the season or period of time wherein it is made to flow; that rights by appropriation are measured and limited by time and season of use as well as by amount of water \*\*\*\*\*"

The same conclusion may be held in this instance. The natural regimen of San Dimas Creek has been changed by the temporary storage of water in the flood control reservoir and the water thus held cannot be considered as a part and parcel of the natural flow and therefore cannot be legally claimed under the doctrine of riparian rights nor under claim of appropriative rights initiated prior to the effective date of the Water Commission Act.

There is nothing in the Act creating the Flood Control District which repeals or modifies any provision of the Water Commission Act and it is the opinion of the Division that an appropriative right to the use of waters released from storage by the Flood Control District can only be initiated by filing applications as provided in the Water Commission Act.

While it may be true that the operation of the flood control reservoir may restrict the percolation area to a certain extent, this fact is immaterial as conditions of flow prior to the impounding of water in the flood control reservoir have been changed by a flood control district of which the very owners overlying the basin are a part and these same owners



have acquiesced and permitted these conditions to exist over a period of time in excess of the statute of limitations.

Since the San Dimas reservoir has been constructed, there has been no showing that any of the protestants have been affected other than beneficially by its operation.

PRIORITY OF RIGHT GOVERNS ACTION UPON  
APPLICATION TO APPROPRIATE

The fundamental doctrine of appropriation is "first in time, first in right." The San Dimas Water Company was the first applicant to apply for waters made available by the operation of the flood control reservoir and as the existence of unappropriated water has been shown it should be the first to receive a permit for the amount applied for.

The San Dimas Land and Water Company by virtue of the compromise decree set forth above believes that it should be entitled to its proportional share of the available waters and laying particular stress upon those terms of the decree which specify that it is entitled to whatever waters may be developed in the future by tunnelling or by any other works whatsoever until the amount available to it should be 30 inches of water measured under a 4 inch pressure, it believes that it has a priority of right superior to any other applicant to take such water as may be necessary to make up the first thirty inches at its intake.

With this contention we cannot agree. The decree is apparently the result of an agreement between the predecessors in interest of the San Dimas Land and Water Company and the San Dimas Water Company and while it may be binding as between these parties, it is certainly not binding upon the Division nor any others not parties to the agreement.

Whether or not there is sufficient unappropriated water in amount to supply the subsequent appropriators after the rights of the San Dimas Water Company have been fully satisfied under Application 1493 will depend largely upon the method of operation of the flood control reservoir over which this office has no jurisdiction whatsoever. It would appear reasonable to assume however that at times waters would be released from the reservoir in amounts in excess of the capacity of the diversion works of the earlier applicants and should be made available for diversion under the subsequent filings.

The San Dimas Water Company owns the land at the intake of the San Dimas Land and Water Company which is common to both companies and claims that the present conduit is not of sufficient capacity to admit of joint diversion of  $37\frac{1}{2}$  miners inches and that the San Dimas Land and Water Company would have to install an additional conduit, intimating that right of access would be denied unless a proper agreement could be arranged. The San Dimas Land and Water Company on the other hand claims that by virtue of long continued use it has the right of access necessary to divert any additional water which may be available under its Application 2418. It appears that the issue is squarely joined and is without the jurisdiction of this office.

Under date of February 5, 1935, each applicant was requested to inform this office as to what immediate steps it had in mind for construction necessary to consummate the appropriation applied for and was given to understand that if it failed to answer this question satisfactorily it would be considered that no steps were in mind and the application would be cancelled.

Under date of May 20, 1935, the San Dimas Water Company informed this office that its existing works are sufficient to take care of the water applied for under Application 1483.

The San Dimas Land and Water Company under date of May 21, 1935, advised this office that it would require no further construction to consummate the appropriation of any portion of the water discharged from the flood control reservoir that may be allotted to it.

Under date of May 24, 1935, the Glendora Consolidated Mutual Irrigating Company informed this office that it had negotiations under way with the San Dimas Water Company which if completed would eliminate it from the issue and asked for further extension in which to press the negotiations to conclusion.

Under date of May 27, 1935, A. L. Sonderegger advised this office that as far as Applications 2433 and 2887 were concerned, the intervention of the depression had retarded developments which he had planned for his property but the proposed development had not been abandoned and would be resumed as soon as general business conditions have been restored to normalcy.

Under date of May 27, 1935, the Glendora Consolidated Mutual Irrigating Company was informed by the Division that it was proposed to act on the prior applications leaving action on Application 4583 until September 1st or thereabout.

#### CONCLUSION

By act of legislature the Los Angeles County Flood Control District has the right to control the flood and storm waters of San Dimas Creek and to conserve such waters for beneficial and useful purposes by spreading, stor-

ing, retaining or causing these waters to percolate into the soil within the District but in so controlling these waters the District is not to divert water to the detriment of vested owners without due compensation. The San Dimas reservoir constructed for purpose of flood control has been in operation for some twelve years. The water stored therein is not stored or retained under the Water Commission Act nor has the Division any jurisdiction over the release of water so stored.

The water when released from storage is not natural flow of the season or period of time wherein it is made to flow and is therefore water which cannot be claimed under the doctrine of riparian rights nor can it be claimed under appropriative rights initiated prior to the time when these waters were in contemplation. The waters after release are subject to appropriation under the Water Commission Act and a right to appropriate same can only be initiated by the filing of an application with this office.

Not only is water which is released from storage from the flood control reservoir subject to appropriation but water which at times may flow out of the San Dimas basin without serving a useful and beneficial purpose is also subject to appropriation and at times when the flood control reservoir is full it is possible that applicants may be in a position to utilize the direct flow of the creek. The courts have recently held that rights to water or the use thereof shall be limited to water reasonably required and shall not extend to waste, unreasonable use, unreasonable methods of use or unreasonable methods of diversion.

As there is unappropriated water available for appropriation under the Water Commission Act the San Dimas Water Company has the first right to take such water as may be available to satisfy the right initiated by its Application 1485. The San Dimas Land and Water Company follows next

with its Application 2413, then A. E. Soedergerger with Applications 2433 and 2887 and Glendora Consolidated Mutual Irrigating Company with Application 4583.

Whether or not sufficient water will be available for appropriations for the later applicants after the earlier priorities are satisfied the Division is unable to determine as this will depend largely upon the operation of the flood control reservoir. Apparently all applicants are ready and anxious for action upon their applications with the exception of Glendora Consolidated Mutual Irrigating Company which has advised this office that negotiations are in progress with the San Dimas Water Company which if completed would eliminate it from the issue and further time has been allowed this company to press its negotiations.

In accordance with the above, it is the opinion of this office that Applications 1483, 2418, 2433 and 2887 should be approved subject to vested and existing rights and that action should be withheld upon Application 4583 until further order is entered.

ORDER

Applications 1483, 2418, 2433, 2887 and 4583 for permits having been filed with the Division of Water Rights 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 Applications 1483, 2418, 2433 and 2887 be approved and that permits be granted to the applicants subject to such of the usual terms and conditions as may be appropriate, and

IT IS FURTHER ORDERED that action upon Application 4883 be with-  
held until further order is entered.

WITNESS my hand and the seal of the Department of Public Works of  
the State of California this *8th* day of *July*, 1935.

EDWARD HEART, State Engineer

BY Harold Conkling  
Deputy

