

*Stead*

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

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In the matter of Application 7901 of South Coast County  
Water District, successor in interest of A. J. Stead  
to appropriate water from Aliso Creek in Orange  
County for Municipal Purposes.

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DECISION A. 7901 D # 386  
Decided *April 9, 1936*

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APPEARANCES AT HEARING HELD AT LOS ANGELES, MARCH 6, 1936

For Applicant  
A. J. Stead

Head, Wellington & Jacobs  
by Wellington

For Protestants  
L. F. Moulton & Company

Scarborough & Bowen  
by James G. Scarborough

H. F. Tresslar

Lawrence Hall

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 DESCRIPTION OF PROJECT

Application 7901 was filed by A. J. Stead on April 11, 1934. It proposes  
an appropriation of 2650 acre feet per annum from Aliso Creek to be stored tem-  
porarily in the proposed Aliso Reservoir (capacity 2650 acre feet), collection to  
be made throughout the year and the storage to be subsequently released and ap-  
plied to beneficial use for municipal purposes within the boundaries of the South  
Coast County Water District including lands within Section 31, T 7 S, R 8 W, and

Sections 5, 6 and 8, T 8 S, R 8 W, S.B.B.&M. as shown on a map filed with this office on January 21, 1935. The point of diversion and site of the proposed storage dam are within the SW<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub> of fractional section 32, T 7 S, R 8 W, S.B.B.&M. about three quarters of a mile above the point where Aliso Creek enters the Pacific Ocean. Application 7901 was protested by L. F. Moulton & Company and H. F. Tresslar.

#### PROTESTS

L. F. Moulton & Company claims to be the owner of approximately 2965 acres of land in Sections 26, 27, 28, 33, 34, and 35, T 6 S, R 7 W, and in Sections 3, 4, 9, 10, 15, 16, 21 and 22, T 7 S, R 8 W, S.B.B.&M., which land is said to be riparian to Aliso Creek and above the proposed point of diversion of the applicant. Protestant alleges in effect that (1) there is no unappropriated water in Aliso Creek and (2) that the reservoir proposed by the applicant will cause a portion of protestant's lands to be flooded and that protestant was not disposed to grant or to sell to applicant the necessary right of access over its lands.

H. F. Tresslar, Trustee in Bankruptcy No. 12769-H, Skidmore Bros. Corporation, claims rights to the waters of Aliso Creek based upon "purchase of riparian rights, prior appropriation, development and beneficial use" and alleges in effect that water is diverted at points below applicant's proposed point of diversion at a rate of 50 miners inches throughout the year for domestic purposes; that the corporation owns one-half the water in Aliso Canyon by purchase; and that should Application 7901 be approved it would result in depriving the corporation of water to which it is entitled.

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

Application 7901 of A. J. Stead was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested was set for public hearing in accordance with Section 1a of the Water Commission Act on March 6, 1936, at 10:00 o'clock A.M. in Room 803 California State Building, Los Angeles, California. Of this hearing applicant and protestants were duly notified.

HYDROGRAPHY

Aliso Creek, the source of the proposed appropriation, rises in the foothills of the Santa Ana Mountains at an elevation of approximately 2300 feet and flows in a general southwesterly direction a distance of about 17 miles to the Pacific Ocean. The proposed storage dam is to be located about three quarters of a mile above the mouth of the creek. Tributary to the creek at this point is a drainage area of approximately 31 square miles of which 8.5 square miles lies above the town of El Toro where records of flow are supplied to the water resources branch of the United States Geological Survey by the Orange County Flood Control District. These records have been kept since October 1930 and are set forth in the following table.

Monthly and Seasonal Runoff in Acre Feet  
of Alico Creek at El Toro

Month	1930-31	1931-32	1932-33	1933-34	1934-35
October	0	0	0	0	18
November	0	45	0	0	16
December	0	103	0	26	29
January	0	5	165	97	194
February	13	404	0	20	93
March	0	0	0	12	273
April	8	0	0	0	9
May	0	0	0	0	0
June	0	0	0	0	0
July	0	0	0	0	0
August	0	0	0	0	0
September	0	0	0	0	0
Total	21	558	165	155	632
Index of Wetness Based upon Santa Ana Records of Precipitation	98	133	81	96	158

The flow as set forth above is from 8.5 square miles of drainage area or approximately 27 1/2% of the drainage area above the applicant's dam site. The elevations within the 8.5 square miles vary from about 450 to 2300 feet. The elevations within the 22.5 square miles below El Toro vary from about 25 feet to about 885 feet. Although the drainage area below El Toro is 2.65 times the drainage area above El Toro it is not likely that the runoff from the larger area would appreciably exceed the runoff of the higher watershed.

Mr. Stead has estimated the safe yield of the proposed reservoir at 150 acre feet. (See memorandum of hearing) and in his opinion there was no usable surface flow without storage. While it is possible that the waters of the creek recharge the underground gravels the testimony presented at the hearing indicated that the soil was tight and susceptible of little recharge.

#### DISCUSSION OF PROTEST OF H. F. TRESSLAR, TRUSTEE

Testimony presented at the hearing by Mr. Skidmore, witness for the protestant, indicated that although in 1924 wells had been drilled into the gravels of the bed of Aliso Creek some 1000 feet from its mouth and water had been served to the town of Laguna Beach for domestic purposes, this service was discontinued in 1928 due to the undesirable quality of the water, it being heavily impregnated with chlorides.

Although protestant claims a right to the use of the waters of Aliso Creek based upon prior appropriation and use, no showing was made which would indicate that an appropriative right was initiated prior to December 19, 1914, the effective date of the Water Commission Act nor has any application been filed with this office by protestant or his predecessors in interest. Even assuming that protestant had a valid appropriative right at one time it appears entirely clear that such right has been lost by non user.

Although protestant also claims a right to use water as a riparian owner, it appears that no use of the water is now being made by protestant and it is the well established practice of the Division not to deny the approval of an application upon the basis of riparian use which is prospective only.

The protest of H. F. Tresslar, Trustee, may therefore be dismissed.

#### DISCUSSION OF PROTEST OF L. F. MOULTON AND COMPANY

Uncontroverted testimony presented at the hearing indicated that the impounding of water as proposed by the applicant would cause the water to spread over a portion of the lands of L. F. Moulton and Company. While the acquire-

ment of the necessary right of access is prerequisite to the approval of an application by an individual, it appears that on March 10, 1936, subsequent to the hearing, A. J. Stead assigned all his right, title and interest in Application 7901 to the South Coast County Water District, an agency having powers of condemnation and it would therefore appear that lack of right of access cannot now be properly urged as a reason for denying the approval of Application 7901.

Mrs. L. F. Moulton has directed attention to the fact that should Application 7901 be approved it would forever deprive the protestant company from conserving and utilizing the waters of Aliso Creek which pass through the company's lands.

The lands of L. F. Moulton and Company are above the proposed point of diversion of the applicant and the Division has consistently held that any upstream diverter or user of water, irrespective of the claim of right upon which his diversion or use may be based, has no valid protest against the approval of an application to appropriate water at a point downstream from his point of diversion.

It appears entirely clear that L. F. Moulton and Company may divert any water to which it may be entitled before the water reaches the proposed point of diversion described in Application 7901 and we know of no basis upon which the company could sustain an action against one who would divert water from the stream after it passes its point of diversion.

As to the possibility of protestant itself under a later application undertaking to conserve water by storage, it would appear that protestant may well be concerned as the records of stream flow set forth above indicate that only in exceptional years, if ever, would the applicant be able to impound the full amount of water applied for under Application 7901. In fact during

the four years of record this amount has never been available. This fact however affords no basis for denying an earlier appropriation as the rule is well established under the appropriative doctrine that "first come, is first served."

#### CONCLUSION

The use to which applicant proposes to put the water is a useful and beneficial one and it appears that there is unappropriated water in Aliso Creek which may be taken and used by the applicant under Application 7901 without interfering with prior and existing rights. However it is believed that seldom, if ever, will the amount which applicant seeks to appropriate be available for storage in any one year. As the proposed reservoir is located near the mouth of Aliso Creek, applicant will be in a position to conserve practically all of the waters of the Creek available at its point of diversion which would otherwise be wasted into the Pacific Ocean and it is possible that applicant during years of exceptional runoff may be in a position to impound the entire amount of water applied for.

It is the opinion of the Division that Application 7901 should be approved subject to the usual terms and conditions.

#### ORDER

Application 7901 for a permit 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 Application 7901 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 9<sup>th</sup> day of April, 1936.

EDWARD HYATT, State Engineer

BY Harold Conkling  
Deputy

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