

Before the Division of Water Resources
Department of Public Works
State of California.

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In the Matter of Application 9088 of Don E. McGuffin to
Appropriate Water from Coldwater Creek, Tributary to
Mammoth Creek and Owens River in Mono County
for Domestic and Stockwatering Purposes

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DECISION A 9088 D-425

Decided *August 25, 1938*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, AUGUST 15, 1938.

For Applicant

Don E. McGuffin

No appearance

For Protestant

Dept. of Water and Power, City of Los Angeles

No appearance

EXAMINER: Everett W. Bryan, Supervising Hydraulic Engineer for Harold Conkling,
Deputy in Charge of Water Rights, Division of Water Resources, De-
partment of Public Works, State of California.

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O P I N I O N

General Description of Project

Under Application 9088, filed with the Division of Water Resources on August 25, 1937, it is proposed to appropriate 1,000 gallons per day from Coldwater Creek from May 1 to October 31 for domestic and stockwatering purposes at "McGuffins Pack Station" on Lot 39 of Lake Mary Tract of the Inyo National Forest, being within the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 9, T 4 S, R 27 E, M.D.B. & M. It is proposed to divert the water from Coldwater Creek at a point within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 16, T 4 S, R 27 E, M.D.B. & M. and to conduct it by a

ditch 300 feet in length to Mammoth Creek. The water will then flow down Mammoth Creek to a point within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 16 where it will be rediverted through a ditch 5150 feet in length to the place of use. The water will be used at a cabin for domestic purposes and it is proposed to water 50 saddle and pack horses. The application was protested by the Department of Water and Power of the City of Los Angeles.

PROTEST

The Department of Water and Power of the City of Los Angeles has Application 531 before this office to appropriate 500 cubic feet per second by direct diversion and 329,926 acre-feet per annum by diversion to storage in Long Valley Reservoir on the Owens River to which Coldwater Creek is tributary via Mammoth Creek, for power purposes. The points of diversion are located on Owens River within Section 19, T 4 S, R 30 E, N.D.E. & M. about 30 miles below the proposed diversion point of applicant. Protestant also claims rights by virtue of riparian ownership and alleges in effect that should Application 9088 be approved it would result in interference with prospective use under its prior application and with its use of water for the generation of power and the irrigation of agricultural lands and for more than twenty years last past for domestic uses within the City of Los Angeles. Accompanying the protest was a letter stating that it was anticipated that the matter would be set for hearing at Sacramento and would appreciate it if the Department might be excused from attending, relying upon our knowledge of the facts without the necessity of any further showing.

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

Application 9088 of Don E. McGuffin 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 Monday, August 15, 1938, at 10:00 o'clock A.M. in Room 401 Public Works Bldg., Sacramento, California. Of this hearing applicant and protestant were duly notified.

GENERAL DISCUSSION

At a hearing held on April 27, 1937, in connection with Application 8353 of T. J. Yerby to appropriate from Rock Creek tributary to Owens River in Mono County for domestic purposes, protestant Department of Water and Power of the City of Los Angeles appeared and presented at some length its reasons for objecting to the approval of applications in the Owens River watershed. After carefully weighing the evidence it was the conclusion of the Division that the appropriation would have only a negligible effect on protestants' water supply and that inasmuch as the appropriation proposed was for the highest use recognized from the standpoint of public interest, doubt should be resolved in favor of the applicant. The application was accordingly approved.

Prior to a public hearing held in connection with Application 8906 of Caroline Flavell and Application 9025 of M. Zuckerman Inc. to appropriate from Rock Creek, which applications were also protested by Department of Water and Power of the City of Los Angeles, protestant was advised that unless it had some additional evidence or argument to present in support of its protest to that already presented in connection with Application 8353 of T. J. Yerby, the convenience of all parties would be served if it would rest upon its previous showing. To this, the protestant consented and consequently no appearance was made at the hearing either by the protestant or by the applicants. Upon the basis of the previous showing the protests which were filed by the Department of Water and Power were rejected and Applications 8906 and 9025 approved subject to such of the usual terms and conditions as were deemed appropriate. (Decision A. 8906-9025 D.411)

In the case of Application 9088 of Don E. McGuffin, now before this office, the situation is similar. Protestant requested that it be excused from attending the hearing and stated that it would rely upon our knowledge of the facts without the necessity of further showing. Consequently applicant was advised that it would not be necessary for him to appear at the hearing because in similar cases it had been the practice of the Division to overrule protests by the Department of Water and Power where it appeared that the proposed appropriation would have no substantial effect upon the diversions of the City.

There is nothing in the record which would recommend a different course of action than that taken in connection with the Rock Creek applications described above. The source of appropriation is indirectly tributary to Owens River, the use proposed is for domestic and stockwatering purposes within the Owens Creek watershed and it is therefore the opinion of the Division that Application 9088 should be approved subject to such of the usual terms and conditions as may be appropriate.

O R D E R

Application 9088 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 9088 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 25 day of Aug, 1938.

EDWARD BYATT, STATE ENGINEER

By HAROLD CONKLING

Deputy

(Seal)

WES:m