

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
BEFORE THE STATE ENGINEER AND  
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 13538 by Fred D. Maxwell to Appropriate Water from Elizabeth Lake Canyon, Tributary to Santa Clara River in Los Angeles County, for Irrigation and Domestic Purposes.

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Decision A. 13538 D. 723

Decided September 17, 1951

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APPEARANCES AT HEARING HELD AT LOS ANGELES ON JANUARY 24, 1951:

For the Applicant

Fred D. Maxwell In person

For the Protestants

William D. Klingerman In person

San Fernando Valley Council,  
Inc., Boy Scouts of  
America Milton Anderson

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works, for A. D. EDMONSTON, State Engineer.

Also Present: Supervising Hydraulic Engineer Max Bookman, Senior Hydraulic Engineer J. J. Heacock and Junior Civil Engineer Walter L. Terry, Division of Water Resources, Department of Public Works.

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O P I N I O N

General Description of the Project

The application contemplates an appropriation of 0.5 cubic foot per second, year-round, from Elizabeth Lake Canyon, tributary to

Santa Clara River in Los Angeles County, for irrigation and domestic purposes. The proposed diversion is to head at a point within the SE $\frac{1}{2}$  NE $\frac{1}{2}$  of Section 27, T7N R15W, S33&M. Diversion is to be effected by means of a 450 gallons-per-minute pumping plant and conveyance by means of a 4 inch steel pipe line, 3434 feet long. The proposed place of use is described as the West 40 acres of the E $\frac{1}{2}$  NE $\frac{1}{2}$  of the same Section 27. The proposed use includes the irrigation of a 30 acre orchard and 10 acres of general crops, and a domestic supply for 3 people, domestic animals, a garden and fish ponds. The applicant claims also a riparian right.

#### Protests

William D. Klingerman protests on the basis of an asserted riparian right and use since 1947 in the amount of 150 to 200 gallons per day, when that amount is available. He describes his diversion as heading within the SE $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 27, T7N R15W, S33&M. He apprehends that if the applicant diverts as proposed in the application, he (Protestant Klingerman) will be entirely without water for watering live stock and for domestic purposes. He remarks that this tributary (Elizabeth Lake Canyon) has been extremely low during the past few years and stops flowing completely during hot summer days.

The Boy Scouts of America (San Fernando Valley Council, Inc.) protest on the basis of a prior application, riparian right and a right by continuous use since 1922. They contend that the diversion proposed by the applicant will result in depletion of the well water supply at their camp on Elizabeth Lake Canyon, downstream from the applicant. They claim to have established their camp (Camp Letten) in 1922 and to have operated and maintained it in the interests of Scouting since that

year. They estimate their use to be from 10 to 12 acre feet per annum for culinary and sanitary purposes, for irrigation and for the supply of a swimming pool. They state that their diversion heads within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 34, T6N R16W SBB&M. They state further that the surface flow of the stream in question often fails completely in dry years, that in order to secure a continuous water supply a 12 inch well has been drilled some 100 feet from the creek channel, that well being supplied by underflow of the creek. They state finally:

"Our experience of the past 28 years has convinced us that the diversion of the quantities applied for - - - will cause the failure of our water supply and will inflict irreparable damage to the Scouting Program."

#### Answers

In reply to both protests the applicant states that Elizabeth Lake Canyon Creek transverses his land, that he proposes to divert water from the stream into 2 fish ponds which have been in use since 1945, that from the lower pond the water diverted drains back into the creek, and that the water which is to be used for irrigation will drain back into the creek with but minor losses. He claims to be entitled (possibly as a riparian owner) to a reasonable supply for domestic and irrigation purposes, states that whereas a 4 inch pipe line is specified in the application he is prepared, as a compromise, to utilize a 2 inch pipe. He professes to believe that the use he proposes will not cause any appreciable reduction in the protestants' supply. He states that in building his fish ponds he tapped 3 or more springs which now contribute to the creek, somewhat increasing the latter's flow. With regard to the protest on behalf of the Boy Scout Camp, he argues that that installation is some 18 miles downstream, and is but partially dependent upon the source upon which he has filed.

Hearing Held in Accordance with the Water Code

Application 13538 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources and being protested was set for formal hearing under the provisions of Article 733(a) of the California Administrative Code on Wednesday, January 24, 1951, at 10:00 o'clock A.M. in Room 803, California State Building, Los Angeles, California. Of the hearing the applicant and the protestants were duly notified.

Discussion

Hearing testimony bearing directly upon the main point at issue, i.e. the existence or non-existence of unappropriated water in Elizabeth Lake Canyon, was general rather than specific and it was inconclusive. The applicant read a prepared statement setting forth in substance that he as a riparian owner should be entitled to the water applied for, that water having been used for domestic purposes on his property, his father's and his uncle's, all adjoining, for 60 years, that the headwaters of Elizabeth Canyon Creek rise mainly on those 3 properties, that the only time the creek gets a normal supply is when Lakes Elizabeth and Hughes overflow, that the protestants' trouble in getting water is due to causes other than insufficiency of flow, that the trouble on the Klingerman place is the intersecting Hyatt Canon, filled with coarse sand and gravel, into which surface flow disappears, that the Boy Scouts camp, 16 miles downstream, is fed by several tributaries other than Elizabeth Lake Canyon, the flow of which tributaries would not be decreased by the appropriation sought. On cross examination the applicant testified that his house use is served by a spring, that he has a 200 foot lake of water which he uses for irrigation, that

he has over 600 trees and 1000 grape vines, that the water applied for would not be enough but would help, that he has 2 ponds adjoining the creek, and 3 springs that flow into one of the ponds, that pumping from the creek is also necessary to keep the ponds full, that his property was surveyed recently, at his own expense, by one Mr. Hogan, that the point at which he proposes to divert is on his land, that the creek is on his land, that there was no surface flow in the channel of Elizabeth Canyon in the summer of 1950, that flow however occurs underground, that he expects to pump the water which he is applying for, that his ponds were constructed in 1945, that before the ponds there were sump holes, that the springs that feed the ponds used to reach Elizabeth Creek, that he irrigates 30 acres now by hauling 60,000 gallons per month, which is not enough, that he expects to irrigate an additional 10 acres, that it will be necessary to lift the water some 50 feet, that his project does not include a dam, that pumping is proposed from a well located at the edge of the creek, that the well would be fed from underground water, that a 50 foot well would probably suffice, that no more water than necessary will be used because of the expense of pumping, and that in his opinion his diversion would injure no one down stream. Indicative of his apparent faith in his project he answered the question (page 42 of Transcript), "Do you think you could pump 365 days a year, 24 hours a day at the rate of that many gallons per minute?" by stating:

"I do think I could, there is that much water underground, yes. They are doing it right below me, all around there and they have the water."

Following the applicant's presentation at the hearing, 2 witnesses testified on the applicant's behalf. Witness John Cassou testified (page 45 of Transcript) in substance to having farmed a ranch for

12 years across the creek from the applicant's place, that he doesn't think the applicant's proposed diversion would interfere with diversions downstream "because the water he uses goes right back into the creek again," that the applicant was irrigating 4 to 6 acres of potatoes and corn, in summer, in about the year 1924 and that water and weather conditions were better then than now. Witness Chief Francia testified (page 52 of Transcript) in substance that he helped survey the applicant's boundary line, and that the boundary fence which the survey indicates to be correctly located extends at one place to about the middle of the creek.

Protestant Klingerman participated in cross examining, and commented informally from time to time, but offered no sworn testimony and introduced no witnesses. The tenor of his comments was to question the accuracy of the location of the applicant's boundary fence, and to question the sufficiency of the flow of the stream to serve both the applicant's project and the downstream demands.

Milton Anderson, on behalf of the protestant Boy Scouts of America, testified in substance (page 55 of Transcript) that in that protestant's opinion there is not sufficient water in the source during summers of dry years to support any further diversion than is already being made, and the presently proposed diversion of half a second foot, continuously, will deprive the Council camp of its water supply.

It is apparent that the hearing testimony fails to establish either that surpluses exist at the source from which appropriation is sought or that the diversion proposed by the applicant would injure downstream users.

Numerous scattered measurements of the flow of Elizabeth Lake Creek at Station F141S of the Los Angeles County Flood Control District have been published in the Biennial Report on Hydrologic Data of that agency for the seasons of 1947-48 and 1948-49. The station mentioned is described as being located above Dry Gulch, and therefore is near and probably below the protestant Boy Scout Camp. The measurements referred to, together with unpublished measurements made in 1950 by the same agency are as follows:

Discharges in Cubic Feet Per Second

<u>1947</u>		<u>1948</u>		<u>1949</u>		<u>1950</u>	
<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
		1/8	0.82				
		1/15	0.87				
		1/22	0.86				
		1/29	1.0				
		2/5	2.5	2/17	0.96		
		2/11	1.6			2/16	3.0
		2/27	1.0				
		3/4	1.0	3/3	8.1	3/2	2.0
		3/11	1.5				
		3/17	4.2	3/17	3.9	3/16	1.3
		3/25	9.1	3/24	3.9	3/23	1.4
		3/31	1.7				
		4/8	2.8	4/7	2.3	4/6	0.83
		4/15	1.8	4/14	2.2	4/13	1.6
		4/28	1.8	4/21	1.2	4/21	0.89
		5/6	0.7	4/28	0.72	4/28	1.2
		5/13	0.36	5/5	0.52	5/4	1.3
		5/20	0.51	5/19	1.0	5/11	0.39
		5/26	0.13			5/25	0.17
		6/4	0.51				
		6/9	0.04				
10/30	0.04						
12/4	0.13						
12/18	0.12						
12/31	1.2						

This record while discontinuous nevertheless indicates that there is ordinarily some surface flow at or near the lowermost protestant's point of diversion, and that such flow has ordinarily equalled or exceeded

the 0.5 cubic foot per second applied for by the applicant, until some time in May. The measurements manifestly apply to surface flow only.

As to the underflow of Elizabeth Canyon Creek, if any, information is almost wholly lacking. However the lower protestant is some 16 miles downstream from the applicant and it is unlikely that pumping by the applicant after the cessation of surface flow would be felt at the Boy Scout Camp before winter rains would refill the gravels. Again, in view of the relatively large watershed tributary to the lowermost protestant's intake as compared with the relatively small watershed tributary to the applicant's project, the probability of interference with the lower protestant's pumping by the applicant's proposed diversion appears small. For these two reasons the risk that the proposed diversion will injure the lower protestant is deemed too slight to constitute a bar to approval of the application.

The prior application referred to in the protest by San Fernando Council, Inc., Boy Scouts of America is Application 4024, Permit 2050, License 661. It provides for an appropriation of 0.11 cubic foot per second, the water to be diverted from Elizabeth Lake Canyon Creek from about June 1 to about September 15 of each season, at a point within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of unsurveyed Section 34, T6N R16W SBB&M, and used for domestic and swimming pool purposes. According to the Report of Licensee for the year 1948, diversion is now made by means of a cased well. According to the report of inspection of the project in connection with license action, water flows continuously through the swimming pool and flows therefrom directly back to the creek channel.

The other protestant (William D. Klingerman), according to his protest, utilizes 150 to 200 gallons per day, an extremely small fraction



of the  $\frac{1}{2}$  cubic foot per second sought by the applicant. The protestant states that his protest may be disregarded and dismissed "if and at such time as I am able to locate and develop a sufficient water supply for livestock and domestic use." He states in his protest also, "This tributary during the past few years has been extremely low and completely stops flowing during hot summer days." It is thus evident that Protestant Klingerman has already experienced cessation of surface flow and recognizes the necessity of locating and developing an auxiliary supply. While the amount of the underflow of Elizabeth Canyon Creek is unknown, Applicant Maxwell professes to believe that such underflow exists in an amount that will suffice for his project as well as for Protestant Klingerman's requirements. If the facts are as the applicant professes to believe, the diversion which he proposes will probably lengthen the period when Protestant Klingerman will be without surface flow but it will not deny that protestant the opportunity of pumping from the underflow, if he so desires. If the underflow is less than the applicant estimates it to be the appropriation which he seeks would only authorize him to divert such quantity as would not unduly affect the protestant or other users downstream. It is the policy of the Division that protestants have no right to insist upon maintenance of water level for the sole purpose of avoiding pumping costs but must yield to the public policy declared in Section 100 of the State Water Code. In view of the foregoing it appears that the objections advanced by Protestant Klingerman are not sufficiently substantial to bar the approval of the application.

Summary and Conclusions

Unappropriated water exists at times in the source from which appropriation is sought under Application 13538. Such water ordinarily may be taken and used as proposed in that application without injury to other users. The application should be approved, subject to the usual terms and conditions.

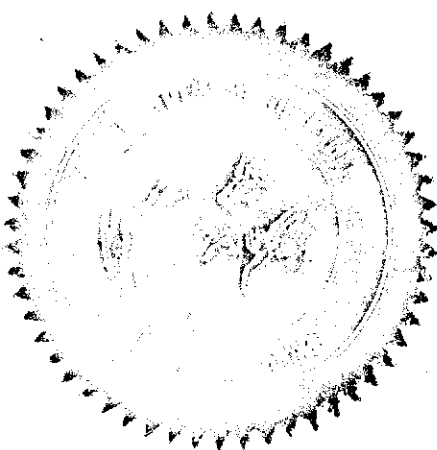
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ORDER

Application 13538 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 State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 13538 be approved and that a permit be issued 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 17th day of September 1951.



*A. D. Edmonston*  
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A. D. Edmonston  
State Engineer