

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

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In the Matter of Applications 3498 and 3997 of Security First National Bank of Los Angeles, and Application 4058 of the City of Sierra Madre to appropriate from Santa Anita Creek, Tributary to San Gabriel River in Los Angeles County for Domestic Purposes and in the Matter of Application 4059 of the City of Arcadia to appropriate from Santa Anita Creek for Municipal and Domestic Purposes.

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DECISION A. 3498, 3997, 4059 and 4058 D 268

Decided *September 13, 1930*

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APPEARANCES AT HEARING HELD IN LOS ANGELES, AUGUST 1, 1928.

For Applicants and Protestants

Pacific Southwest Trust and Savings Bank
(now Security First National Bank of Los Angeles)
City of Arcadia
City of Sierra Madre

D. M. Baker
Walter F. Haas
James H. Howard

For Protestants

City of Monrovia

William F. Palmer

EXAMINER: Harold Conkling, Chief of Division of Water Rights, Department of Public Works, State of California, assisted by Geo. B. Gleason, Assistant Hydraulic Engineer, Division of Water Rights.

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APPEARANCES AT HEARING RECONVENED AT LOS ANGELES, JANUARY 6, 1930.

For Applicants and Protestants

Security First National Bank of Los Angeles
City of Arcadia

City of Sierra Madre

D. M. Baker
Walter F. Haas, Willis Jones,
A. K. Walter
Phil Dodson, A.L. Sonderegger,
E. J. Lynde

For Protestant

City of Monrovia

H. J. Gierlich

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights, Department of Public Works, State of California.

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OPINION

GENERAL FEATURES OF THE APPLICATION

Application 3424 was filed on July 2, 1923, by C. F. Cook. On October 13, 1925, one-half interest was assigned to F. E. Woodley. On December 30, 1926, the application was assigned to Pacific Southwest Trust and Savings Bank, the name of which was changed to Security First National Bank of Los Angeles on January 21, 1930. The source of the proposed appropriation is Santa Anita Creek either natural flow or regulated flow resulting from the operation of a flood control reservoir proposed by the Los Angeles County Flood Control District with an impounding dam located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10, T 1 N, R 11 W, S.B.B. & M. It is proposed to appropriate 3 cubic feet per second by direct diversion at the dam and store temporarily underground in Blocks 97 and 98 of the Santa Anita Tract 3,000 acre feet at a maximum rate of 25 cubic feet per second. The gross diversion under the application is not to exceed 3,000 acre feet per annum. Diversion from natural flow is to be made from November 1st to May 1st of each season and diversion from regulated flow collected in the Los Angeles County Flood Control Reservoir between November 1st and May 1st of each season will be made as same may become available.

The point of diversion to underground storage in Santa Anita Wash will extend from the Los Angeles County Flood Control Dam to Grand View Avenue which extends easterly and westerly through the south fractional corner of Sections 15 and 16, T 1 N, R 11 W, S.B.M. The points of redirection by pumping of stored waters are to be located in Lots 8, 9 and 10, Block 97, Santa Anita Tract.

The water is to be used for domestic purposes in the Cities of Arcadia, Monrovia and Sierra Madre within Sections 10, 13, 14, 15 and 22, T 1 N, R 11 W, S.B.M. and also a part of Santa Anita Rancho and a portion of Santa Anita Tract.

The application was protested by the City of Sierra Madre, City of Arcadia and the City of Monrovia.

Application 3997 was filed on May 21, 1924 by C. F. Cook and F. E. Woodley and assigned to Pacific Southwest Trust and Savings Bank on December 30, 1926, the name of which was changed to Security First National Bank of Los Angeles on January 21, 1930. It proposes the storage of 3,000 acre feet per annum in the gravels of Santa Anita Wash and/or underground storage in Blocks 97 and 98 of Santa Anita Tract. The application is otherwise identical with Application 3493.

The application was protested by the City of Sierra Madre, the City of Arcadia and the City of Monrovia.

Application 4039 of the City of Arcadia was filed June 20, 1924. The source of the proposed appropriation is Santa Anita Creek, either natural flow or regulated flow resulting from the operation of a flood control reservoir proposed by the Los Angeles County Flood Control District with an impounding dam located in the SE₄ Section 10, T 1 N, R 11 W, S.B.S. & M. The amount of water which applicant seeks to appropriate is as follows:

- (a) For diversion to be directly applied to beneficial use without storage..... 2 cubic feet per second.
- (b) For diversion to be stored temporarily underground and later applied to beneficial use 2500 acre feet per annum. Maximum rate of diversion to underground storage will be 14 cubic feet per second.

Diversions from natural flow will be made from November 1st to May 1st of each season and diversions from regulated flow collected in the flood control reser-

voir between November 1st and May 1st of each season will be made as same may become available.

The point of direct diversion is located within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 10, T 1 N, R 11 W, S.B.B. & M. The points of diversion to underground storage are located within the SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 10, T 1 N, R 11 W, S.B.B. & M.

The underground reservoir has an area of 5,000 acre feet and lies within the Cities of Arcadia and Sierra Madre. It is bounded on the north by the Sierra Madre Mountains, on the east by the escarpment of Santa Anita Creek, on the south by Raymond Hill Dyke and on the west by the western boundary line of the Cities of Sierra Madre and Arcadia.

The spreading works will consist of 4 old 20" wells located in Lot 4 Block 97 Santa Anita Tract.

The four points of rediversion from the underground basin are within the S $\frac{1}{2}$ of Lot 4, Block 97, Santa Anita Tract.

The water is to be used within the City of Arcadia for domestic purposes.

The application was protested by the Pacific Southwest Trust and Savings Bank (now Security First National Bank of Los Angeles) and the City of Sierra Madre.

Application 4253 was filed by the City of Sierra Madre on June 30, 1924. The source of the proposed appropriation is Big Santa Anita Creek, either natural flow, or regulated flow resulting from the operation of a flood control reservoir proposed by the Los Angeles County Flood Control District, with an impounding dam located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10, T 1 N, R 11 W, S.B.B.&M.

The amount of water which applicant seeks to appropriate is as follows:

- (a) For diversion to be directly applied to beneficial use without storage 4 cubic feet per second
- (b) For diversion to be stored temporarily underground and later applied to beneficial use 2000 acre feet per annum. Maximum rate of diversion to underground storage 10 cubic feet per second.

Diversion from natural flow will be made from October 1st to June 1st of each season and diversion from regulated flow collected in Los Angeles County Flood Control reservoir between October 1st and June 1st of each season will be made as same may become available.

The spreading grounds will be located in Lot 10, Sierra Madre Tract.

The boundaries of the underground basin are the escarpment of Sierra Madre Mountains on the North and East, the Raymond Dike on the south and the apparent division between Eaton Wash Basin and Santa Anita Basin on the West containing approximately 2,000 acres. Diversion to underground storage will be accomplished by means of a pipe line from the intake in Santa Anita Canyon to the spreading grounds at which point water will be distributed by use of gate valves, ditches and basins or shafts.

The points of rediversion of stored waters will be located at Wells Nos. 1 and 2 of the City of Sierra Madre within Lot 10, Sierra Madre Tract.

The water is to be used for domestic purposes within the City of Sierra Madre.

The application was protested by the Pacific Southwest Trust and Savings Bank (now Security First National Bank of Los Angeles.)

PROTESTS

Pacific Southwest Trust and Savings Bank

The protests of the Pacific Southwest Trust and Savings Bank (Security First National Bank of Los Angeles) against the approval of Application 4039 (City of Arcadia) and Application 4058 (City of Sierra Madre) were filed May 19, 1927. Protestant claims rights to the waters of Santa Anita Creek by virtue of riparian ownership and beneficial use for irrigation and domestic purposes and alleges in effect that there are no unappropriated waters available for applicants; that should any water be made available by virtue of storage in the Flood Control Reservoir of the County of Los Angeles, protestant should, by virtue of its Applications 3498 and 3997, have a prior right thereto.

City of Sierra Madre

The protest of the City of Sierra Madre against Applications 3498 and 3997 of Security First National Bank of Los Angeles was filed April 22, 1926, and against Application 4039 of the City of Arcadia on May 23, 1927.

Protestant claims a priority of right to continue to use sufficient water from its wells in the Santa Anita Basin to supply its domestic and irrigation needs and objects to the transportation of water to lands lying without the Basin. Protestant claims a preferred priority over Applications 3498 and 3997 by virtue of Section 23 of the Water Commission Act.

City of Arcadia

The protest of the City of Arcadia against the approval of Applications 3498 and 3997 of Security First National Bank of Los Angeles was filed May 17, 1926. The City alleges in effect that under Application 4039 although filed subsequently to Applications 3498 and 3997, it has a preferred priority

under Section 20 of the Water Commission Act to appropriate the waters of Santa Anita Creek.

City of Monrovia

The protest of the City of Monrovia filed August 16, 1923, is directed against the approval of Applications 3493 and 3997 of Security First National Bank of Los Angeles, and alleges possible interference with its "Chapman Wells" which are assumed to be supplied from the percolating waters of the Santa Anita Wash.

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

The several applications were 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 were set for a public hearing in accordance with Section 1a of the Water Commission Act on August 1, 1923, at 10:00 o'clock A.M. in Room 1025 Associated Equity Building, Los Angeles, California. Of this hearing applicants and protestants were duly notified.

Very little progress was made at this hearing, as insufficient information was available and it was agreed that a series of conferences between the parties at interest might result in a compromise. The hearing was accordingly adjourned sine die.

At a conference held on September 15, 1923, C. A. Gierlich, W. L. Hoffeditz, D. M. Baker, Willis Jones and A. E. Sonderegger were appointed members of a committee of engineers to gather physical facts in connection with the Santa Anita Basin and to make a report to the attorneys representing the several interests.

Due to prior commitments of certain members of the committee no progress was made and another conference was held at Los Angeles on July 15, 1929, but no compromise was effected.

As it appeared that very little progress was being made the hearing was reconvened and continued on January 3, 1930, at 10:00 o'clock A.M. in Room 1026 Associated Realty Building, Los Angeles, California. Of this reconvened hearing, applicants and protestants were duly notified.

At the hearing it was agreed by the several parties at interest that after certain hydrographic material had been collected and submitted to them by Mr. Willis Jones, as previously agreed upon, the entire matter would be submitted on briefs and the necessity for further hearing would be obviated. As a result of this agreement the following briefs were filed.

<u>Name</u>	<u>Date Filed</u>	
	<u>Opening Brief</u>	<u>Reply Brief</u>
Security First National Bank	3-24-30	8-21-30
City of Arcadia	-----	5-19-30
City of Sierra Madre	3-24-30	---
City of Monrovia	3-22-30	---

WATER SUPPLY OF SANTA ANITA BASIN

Santa Anita Basin is bounded on the north by the mountain range, on the east by a projecting southerly spur, on the south by the Raymond Hill Dike and on the west by a more or less indefinitely defined escarpment divide located approximately along the westerly corporate limits of the Cities of Arcadia and Sierra Madre. It comprises an area of about 3055 acres.

The basin is fed from the waters of Santa Anita Creek, Little Santa Anita Creek, Bailey Canyon and from precipitation on the valley floor. According to Bulletin 5 of the Division of Water Rights entitled 'San Gabriel Investi-

gation" the estimated average supply over the period 1898 to 1928 is as follows:

Little Santa Anita Creek	845 A.F.
Santa Anita Creek	4,250 A.F.
Bailey Canyon and East to Little Santa Anita	450 A.F.
Below government station on Santa Anita Creeks	960 A.F.
Precipitation on valley floor	<u>5,570 A.F.</u>
Total	11,875 A.F.

Mr. Willis Jones in his report submitted under date of May 15, 1930, estimates the total supply to the Santa Anita Basin as follows:

Mountain watershed runoff above U.S.G.S. gaging station	4,870 A.F.
Mountain watershed runoff below U.S.G.S. gaging station	1,504 A.F.
Precipitation on plain	<u>4,927 A.F.</u>
Total	11,301 A.F.

According to the Brief submitted by Mr. E. M. Baker he estimates the total contribution to the Santa Anita Basin to be as follows:

Santa Anita Creek	5,620 A.F.
Little Santa Anita Creek	852 A.F.
Unmeasured areas	1,365 A.F.
Precipitation on valley floor	6,070 A.F.
Water applied in irrigation	2,380 A.F.
Return from domestic consumption	<u>474 A.F.</u>
Total	17,261 A.F.

USE OF WATER IN SANTA ANITA BASIN

According to Bulletin 5 (San Gabriel Investigation) the maximum use of water was made in the year 1922, as follows:

Water used within Basin	1,780 A.F.
Water exported	<u>2,490 A.F.</u>
Total	4,270 A.F.

Mr. Jones in his report estimated the use to be 3,845 acre feet to which he adds an evaporation-transpiration loss on 30% of the valley floor of 1,164 acre feet or a total consumptive use of 4,309 acre feet. Mr. Jones estimates the future requirement to be 11,510 acre feet of which 3,379 acre feet is evaporation-transpiration loss.

Mr. D. M. Baker estimates the output of the Basin as follows:

Flood waste and underground overflow	unknown
Exportation	2,380 A.F.
Use within the Basin	3,357 A.F.
Consumptive use from irrigated, irrigable and waste lands	<u>4,365 A.F.</u>
Total	9,802 A.F.

WATER SUBJECT TO APPROPRIATION

The engineers for applicants and protestants although differing somewhat in the amount are agreed that there is at times during a year of normal runoff water which flows on the surface of Santa Anita Creek over the Raymond Hill dike without being utilized by the water users in the Basin.

The maximum flow of record occurred on April 7, 1925, at 4:30 P.M. at which time the discharge of the Santa Anita Creek near Sierra Madre was

about 1400 cubic feet per second. During this season (1925-26) there were only six days during which the average daily flow exceeded 100 second feet, which amount has been selected by the Los Angeles County Flood Control District as a minimum flood flow. The total flow for the season was 3,763 acre feet. The index of wetness was 113. The amount of water over and above a flow of 100 second feet computed on the basis of average daily flow was 1,030 acre feet which is nearly one-third of the total seasonal flow.

The water which applicants seek to divert is surplus water which in a state of nature would not find its way into the underground basin involved.

FLOOD CONTROL RESERVOIR

It was for the purpose of reducing the peak of flood flows similar to the one described above that the Los Angeles County Flood Control District constructed a dam on Santa Anita Creek. The normal outlet capacity according to information filed by the Flood Control District with this office in connection with its application for approval of plans for the dam is 210 cubic feet per second.

WATER MAY BE AVAILABLE FOR ALL APPLICANTS

The following table sets forth the rates of diversion specified in the several applications.

<u>Appl.</u>	<u>Name</u>	<u>Direct Diversion</u>	<u>Diversion to Underground Storage</u>
3493	Security 1st Nat'l. Bank of L.A.	3 c.f.s.	25 c.f.s.
3997	" " " " " "	---	25 c.f.s.
4039	City of Arcadia	2 c.f.s.	14 c.f.s.
4058	City of Sierra Madre	4 c.f.s.	10 c.f.s.

Although it appears that the quantity of water available for appropriation is less than the total amount applied for under the applications, it is probable that the release from storage by the Los Angeles Flood Control District will often be so great that the combined diversion capacities of all applicants will be exceeded and therefore in order that beneficial use of the flood waters captured by the Flood Control Reservoir may be a maximum it would appear that all four of the applications should be approved in order to enable use by all when the rates of release are such as to permit of it. There may be times however when the applicant first in right will be the only one entitled to available water.

PRIORITIES

Mr. Donald Baker, representing the bank, contends that the preference accorded by Section 29 relates to the kind of use and not to the party applicant and that the bank seeks this water for the preferred uses mentioned and is therefore entitled to priority in right because of priority in time.

The statute is specific, however, in its wording and hence the rule of law applies which forbids interpretation. "There is no room for the play of interpretation when the language under review leaves no doubt as to the meaning of those who used it." (Wint v. Ward 99 Cal. 314, 34 Pac. 336 and King v. Armstrong, 9 Cal. App. 365, 99 Pac. 527). A great multitude of cases might be quoted from to like effect, some of which are: Estate of McDonald, 112 Cal. 277, 50 Pac. 399; Prinier v. Kutsch Co., 177 Cal. App. 722, 171 Pac. 952; Mulville v. City of San Diego, 183 Cal. 734, 192 Pac. 702; Sexter v. Shapley-Burness Co., 143 Cal. 558, 285 Pac. 391; Ex Parte Haines, 65 C.A. 522; 229 Pac. 984; Federoff v. Birks Bros., 75 Cal. App.

345, 342, Pac. 335; Blumenthal v. Larson, 79 C.A. 726, 251 Pac. 241; Ex Parte
Blesker, 81 C.A. 122, 252 Pac. 1057; Jay v. District Ct., 200 Cal. 522, 254
Pac. 306; Los Angeles County v. Towne, 82 C.A. 210, 255 Pac. 281; Marshall v.
Williams, 85 C.A. 507, 259 Pac. 370; Jones v. Minnesota, 97 C.A. 17, 275 Pac.
255.

These cases amply sustain the well known rule of law concerning
statutory construction which is that the statute must be ambiguous in order to
admit of interpretation in the courts. Hence if the language of Section 20 of
the Water Commission Act is plain and clear and not susceptible of doubt as to
whom the preferred priority for domestic or municipal use is conferred upon,
then a court has no right to look beyond the statute or attempt to circumvent
the statute or strike out words or insert words. The cases above cited make
this very emphatic and only one possible exception to the rule of no interpreta-
tion where there is no ambiguity has been noted--that is wherein the result would
be absurd.

Now as to the statute in question. It provides:

"The application for a permit by municipalities
for the use of water for said municipalities or the
inhabitants thereof for domestic purposes shall be
considered first in right, irrespective of whether
they are first in time."

The preference accorded is thus explicitly limited to "applications by
municipalities for" the purposes stated. If "or municipalities" could be omitted
then there would be merit to the argument of Mr. Baker. But the words of a
statute must be given effect if they have a meaning and the intent expressed by
the words of a statute govern, wherein the words are of clear and definite import.

In the language quoted there is no uncertainty. It is therein declared, as precisely as the English language admits, that it is an application by a municipality for a municipality or its inhabitants for domestic use that is prior in right even though subsequent in time. Nor is there any absurdity involved in according such a preference to a municipality.

The authorities thus preclude a discussion of the policy or merit or desirability of this preference to municipalities. However, the laws of this state and of other states contain many instances of preferential rights or privileges accorded to municipalities and public agencies. The Water Commission Act (Sec. 239) in conjunction with Section 4295 of the Political Code exempts enumerated public agencies from the payment of filing and permit fees. No purpose will be served by citation of other instances.

While unnecessary in view of the lack of ambiguity in the statute, it is interesting to note the historical background of Section 20 as discussed in an opinion of this office under date of April 17, 1926, in the matter of applications to appropriate from the Mokelumne River by applicants Kieffer, Preston, and East Bay Municipal Utility District, (Decision D 100, pages 33 to 38). It is therein evidenced that a widespread public sentiment favoring and encouraging public or municipal ownership in the development and supply of public necessities was the underlying motive of the Legislature in enacting Section 20. It thus appears that the intent of the Legislature was exactly what its language so precisely states, to wit, that an application by a municipality for the purposes stated should be accorded priority in right irrespective of priority in time.

A further discussion of Mr. Baker's argument seems unnecessary. The considerations discussed are deemed conclusive.

Should the matter become a further issue between the parties it will become a subject for the courts rather than this office to rule upon inasmuch as stated above, there will probably be times when there will be water available for all four applicants, and all four of the applications are in order for approval.

CONCLUSION

The uses to which applicants propose to put the water are useful and beneficial and, although there appears to be an insufficient quantity of unappropriated water available to satisfy all four of the appropriations, it is probable that the rate of release from the flood control reservoir may at times exceed the combined diversion capacity of the three applicants and therefore it is in order to approve all four applications.

ORDER

Applications 3493, 3997, 4033 and 4058 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, public hearings having been held, briefs having been filed and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED THAT the several applications be approved and that permits be granted to the applicants 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 13th day of September, 1930.

EDWARD HAST, State Engineer

Harold C. Cook
Secretary

