

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

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In the Matter of Applications 8675 and 8676 of L. H. Baxter
to appropriate water from Birch Creek and Milk Creek,
tributaries of Tinemaha Creek, thence Owens River
in Inyo County for Irrigation Purposes.

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DECISION A. 8675, 8676 D - 402

Decided *June 10, 1937*

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APPEARANCES AT HEARING HELD AT BISHOP, APRIL 27, 1937

For Applicant

L. H. Baxter

Jess G. Sutliff

For Protestant

Department of Water and Power
of the City of Los Angeles

Carl Davis

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

Applicant L. H. Baxter proposes to irrigate 160 acres of land within
the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 19, T 10 S, R 34 E, M.D.B.&M. locally
known as the "Fuller Ranch". Two sources of water supply are contemplated.
Under Application 8675 he proposes to appropriate 1 cubic foot per second
throughout the year from Birch Creek at a point within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 19,
T 10 S, R 34 E, M.D.B.&M. and under Application 8676 he proposes to appro-

priate 1 cubic foot per second throughout the year from Milk or Fuller Creek. Both applications were 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 claims the right to the waters of Birch and Fuller Creeks by virtue of (1) appropriative rights initiated prior to the effective date of the Water Commission Act; (2) riparian ownership, and (3) rights adjudicated by the U. S. District Court in the case of United States et al. v. Los Angeles, et al. decided by Judge Benjamin F. Bledsoe on May 8, 1917. Protestant alleges in effect that the diversions of water as proposed by the applicant will deprive the City of waters to which it is entitled.

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

Applications 8675 and 8676 were completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Resources and being protested were set for public hearing in accordance with Section 1a of the Water Commission Act on April 27, 1937, at 10:00 o'clock A.M. in the Assembly Room of the City Hall, Bishop, California. Of this hearing applicant and protestant were duly notified.

GENERAL DISCUSSION

Application 8675 (Birch Creek)

Birch Creek, the source of the proposed appropriation under Application 8675 rises on the easterly slope of the Sierra at an elevation of about

12,800 feet above sea level and flows irregularly eastward to its junction with Tinemaha Creek at an elevation of about 4100 feet. The drainage area above the mouth of the Canyon is about 7 square miles. The maximum runoff of Birch Creek occurs during the months of May, June, July and August. There are three complete years of runoff records as follows (U.S.G.S. Water Supply Paper 300, p. 337):

<u>Season</u>	<u>Runoff in Acre Feet</u>
1907-8	5,010
1908-9	8,680
1909-10	8,490

On May 8, 1917, the waters of Birch and Tinemaha Creeks were adjudicated by decree of the District Court of the United States in and for the Southern District of California, Northern Division, in the case of United States of America et al. v. The City of Los Angeles, et al. According to this decree, a copy of which was filed at the hearing as protestant's Exhibit No. 2, the City of Los Angeles was awarded a first right in common with other users on the stream to divert and use 250 inches (measured under a 4" pressure) out of a possible 787 inches and a second right to divert and use 550 inches out of a possible additional quantity of 846 inches together with all the remainder of the combined flow of the two creeks after all other rights were fully satisfied.

According to the record (page 73 of transcript of hearing) it appears that through subsequent purchase of property involved in the decree and appurtenant water rights, the City has acquired the sole right to the waters of Tinemaha and Birch Creeks with the exception of 11 inches under the first right and 14 inches under the second right so that at the present time the City claims an

aggregate of 786 inches in the first right, 831 inches in the second right and the right to all surplus water in Birch and Tinemaha Creeks after the existing rights have been fully satisfied.

The surface flow of Birch Creek is perennial and is tributary to Owens River via Tinemaha Creek. The percolation in the stream bed is slight and the record indicates that although at times the waters of Birch Creek may waste into Owens Lake, this waste is only occasional and any water which reaches Owens River from Birch Creek is diverted to the City of Los Angeles for municipal purposes.

It is a matter of common knowledge that during the summer and fall months the City diverts and beneficially uses all the normal flow of Owens River and the deficiency in supply is such that it has had to resort to other sources to meet its existing demands.

Application 8676 (Milk or Fuller Creek)

Milk Creek which is named as the source of diversion in Application 8676 is shown upon the maps and records of the United States Geological Survey as Fuller Creek. This creek rises in the easterly slope of the Sierra at an elevation of about 8,800 feet above sea level and flows easterly a distance of about 3.5 miles to its junction with Tinemaha Creek at an elevation of about 4900 feet. The surface connection between the waters of Fuller Creek and Tinemaha Creek however occurs only during periods of excessive floods and under normal conditions of flow the waters of Fuller Creek which may be available at applicant's proposed point of diversion sink into the gravels of the stream bed on the property of one Fred Armstrong about one mile below.

On June 22, 1927, the City of Los Angeles acquired by purchase the

property of one H. D. Smith together with all appurtenant water rights. This property is located on Fuller Creek about 1.5 miles above applicant's proposed point of diversion and apparently is riparian to Fuller Creek. Testimony presented at the hearing indicated that during the past ten years about 70 acres of land have been beneficially irrigated, requiring the entire flow of Fuller Creek during the period from about May 1st to about September 1st of each year. The irrigation season in that locality extends usually from about April 1st to about September 1st of each year and applicant himself admitted at the hearing that during this period water would only be available for his use during the month of April. (Transcript of hearing, page 34.)

The record also indicates that any water which is not used beneficially by the City for irrigation purposes on the H. D. Smith ranch either contributes to the surface flow of Tinsmaha Creek during flood flows or sinks into the gravels of the stream bed before reaching Tinsmaha Creek, thereby contributing to the underground basin of Owens Valley where the City has numerous wells from which water has been pumped for municipal purposes, the nearest group of wells being located about three or four miles from the point where the waters of Fuller Creek disappear into the gravels.

The City's pumps have not been operated during recent years and consequently the underground basin is gradually becoming replenished. This is due to the fact that other sources of supply are now being brought into the City but it is intended the underground supply will be used as an emergency supply and if and when the underground basin is entirely replenished, the water in the artesian area will be used for local consumption. We believe that in view of the appropriations made and development by the City there is no surplus available for further irrigation development.

Apparently applicant expects to irrigate about 60 or 70 acres of the 160 acres named in the permit and urges that as much water will return to the underground basin as if the water was allowed to pass downstream and percolate into the gravels of the streambed. The record indicates that along the streambed below applicant's proposed point of diversion there is a narrow fringe of willows extending a distance of about one mile downstream and having an area of less than 1/2 acres. It is obvious that the evaporation and transpiration losses on the lands which applicant proposes to irrigate would be far in excess of that in the streambed.

SUMMARY AND CONCLUSIONS

The record indicates that the waters of Birch Creek have been adjudicated by Court Decree and are now and have been for some time fully applied to beneficial use. The record also indicates that during the period from about May 1st to about September 1st of each year the waters of Fuller Creek have been and are now being used beneficially by the City of Los Angeles for the irrigation of lands formerly belonging to H. D. Smith and that any surplus water contributes to the underground water supply of Owens Valley from which the City has in the past obtained a portion of its municipal supply and will in the future use as an emergency supply.

It is therefore concluded that there is insufficient unappropriated water in Birch and Fuller Creeks to justify the approval of Applications 8675 and 8676 and therefore permits should be denied.

O R D E R

Applications 8675 and 8676 for permits to appropriate water having been filed with the Division of Water Resources as above stated, protests hav-

ing 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 8675 and 8676 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 10th day of June, 1937.

EDWARD HYATT, State Engineer

BY BAROLD CONKLING

Deputy

(Seal)
HES:MP