

State of California
Department of Public Works
Division of Water Resources

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In the Matter of Application 9043 by United States Cleveland National Forest
to appropriate the surface water of Vallecitos Springs No. 2 and No. 3
in San Diego County
for Domestic Purposes.

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DECISION A. 9043 D - 413

Decided *March 1, 1938*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, FEBRUARY 21, 1938.

For Applicant

H.P. Dechant, Attorney for the U.S. Forest Service.

For Protestant

No appearances.

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

Application 9043 is to appropriate the surface flow of Vallecitos Springs No. 2 and No. 3, tributaries of Vallecitos Creek and Salton Sea for domestic purposes. The application is protested by Robert C. McCall who protests on the grounds that the proposed diversion will interfere with use under Permit 3606 of this office issued in approval of Application 6360. The record shows by admission of protestant that there has been no use of water under his permit since 1934. Mr. McCall is homesteading a piece of property on which he proposed to use the

water under his permit. In 1934 he obtained permission from the United States Land Office to reside elsewhere and by his own statement he has visited the property since that time only occasionally and no one has maintained a residence thereon or attempted to use the water.

In view of the provisions of Section 5, Article 14 of the State Constitution, the Division cannot, upon the showing made by the protestant himself, deny the application of ^alater appropriator upon the ground of possible interference with protestant.

Application 9043 is to appropriate unappropriated water subject to prior and existing rights and the applicant is clearly entitled to a permit to use the water which it is sought to appropriate if and when it is not in use under some other valid claim of prior existing right.

If protestant resumes his use before the right under his permit has been forfeited by reason of non-use and lack of diligence, the responsibility will devolve upon Cleveland National Forest to bypass at its point of diversion under Application 9043 whatever water may be helpful and required to satisfy the right of the earlier application.

ORDER

Application 9043 having been filed and completed, having been duly noticed and being protested, and a hearing having been held after due notice as required by the Water Commission Act and the rules and regulations of the Division of Water Resources, and the Division now being fully advised in the premises:

IT IS HEREBY ORDERED that Application 9043 be approved and that a permit be issued thereon subject to the usual terms and conditions.

WITNESS my hand and the seal of the Department of Public Works of the State of California this *First* day of March, 1938.

EDWARD HYATT, State Engineer

By HAROLD CONKLING
Deputy

(Seal)
ENB: IB