

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 11751 by Santa Clara Valley Water Conserva-  
tion District to Appropriate Water from Los Gatos Creek Tributary to  
Guadalupe River in Santa Clara County for Domestic and Irrigation  
Purposes.

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Decision A. 11751 D. 644

Decided December 29, 1949

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APPEARANCES AT HEARING HELD AT SAN JOSE ON AUGUST 16, 1949

For the Applicant

Santa Clara Valley Water )  
Conservation District )

Herbert C. Jones

For the Protestant

Almaden Water Company

Francis C. Arnerich

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of  
Water Resources, Department of Public Works, for EDWARD HYATT, State  
Engineer.

Also in Attendance: Austen D. Warburton of Campbell, Hayes and Custer,  
Attorneys at Law, appearing on behalf of Receiver of protestant company;  
Stanley Mills, a member of the Tax-payers' Conservation League; and  
Lawrence C. Spencer, Assistant Hydraulic Engineer, Division of Water  
Resources, Department of Public Works.

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## OPINION

### General Description of the Proposed Development

Application 11751 contemplates an appropriation of 30,000 acre-feet per annum to be collected between January 1 and December 31 of each year, stored temporarily and later applied to beneficial use by charging into the ground water storage basin underlying Santa Clara Valley Water Conservation District. The source of the proposed appropriation is Los Gatos Creek, in Santa Clara County, and the proposed point of diversion is described as lying within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 29, T 8 S, R 1 W, M.D.B.&M. Storage is to be effected by means of an earth fill dam 170 feet high and 600 feet long. The resulting reservoir which is to be known as Lexington Reservoir is to have a surface area of 450 acres and a capacity of 25,000 acre feet. It is intended that water will be released from the reservoir into the streambed of Los Gatos Creek which is to serve as a main conduit, and will be diverted therefrom as convenient, at various points within the applicant District, by works of various types and capacities. Water so diverted is to be spread upon receptive areas both adjacent to Los Gatos Creek and removed therefrom, but in both cases within the District boundaries. From underground storage recovery is to be made both by private users and by public agencies acting for private users, by pumping plants at suitable locations.

### PROTEST

A protest was filed by F. Arnerich on behalf of Almaden Water Company. The injury that the protestant alleges will result from the proposed appropriation is that siltation of upper stream beds will occur which will prevent the utilization of the water supply heretofore obtainable

from the upper strata. The protestant's point of diversion is described as being located 1/2 mile south and east of Vasona Dam. The protestant represents itself to be a public utility serving water to customers on their application within its certified areas which are located on the upper bench of the applicant District. The protestant states that the protest may be disregarded and dismissed if the applicant will cease interference with underground flow by siltation of upper strata and will restrict its operations to the retarding of water that would otherwise be wasted.

The applicant answers the protest by denying that its proposed operations will cause siltation of Los Gatos Creek or interference with the underflow of that stream, by denying that the protestant furnishes or serves water from Los Gatos Creek and by asserting that its (the applicant's) past operations have greatly benefited the protestant by increasing underground supplies within the area.

#### Hearing Held in Accordance with the Water Code

Application 11751 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 public hearing under the provisions of Article 733(a) of the California Administrative Code on Tuesday, August 16, 1949, at 10:00 o'clock A.M. in Room "E", Civic Auditorium, San Jose, California. Of the hearing the applicant and the protestant were duly notified.

#### General Discussion

The protestant does not in its original protest or in its presentation of evidence at the hearing represent that surpluses do not at times exist in the flow of Los Gatos Creek. Its objections center rather

upon apprehension that the operations contemplated by the applicant will cause siltation which will interfere with the protestant's recovery of ground water and upon apprehension that the applicant will not confine its diversions under Application 11751 to unappropriated waters. These apprehensions whether well founded or not are not a bar to the approval of an application to appropriate, under the Water Code. They are not germane to the issue upon which the Division of Water Resources in this instance is obliged to act, i.e. the question of whether or not surplus, unappropriated water exists in Los Gatos Creek at the point of diversion described in the application.

The alleged facts upon which the protestant at the hearing based its argument against approval of the application were numerous and varied. They included such matters as the alleged sale of water by the Applicant without proper authority, alleged discrepancies in the Applicant's testimony, alleged improprieties on the part of the Applicant in the conduct of its affairs, siltation as an incident in the operation of one of the Applicant's dams, alleged faults in both construction and maintenance of certain of the Applicant's works, and the alleged appropriation by the Applicant of water for one purpose and use for another. No contention was made on behalf of the protestant that unappropriated water does not at times exist in Los Gatos Creek.

For the reasons above stated the protest is adjudged insufficient, no valid grounds for protest having been established.

The discharge of Los Gatos Creek in the vicinity of Los Gatos has been measured by the United States Geological Survey since January, 1930. From 1930 to 1943 the gaging station was located 700 feet above the highway bridge at Los Gatos; next for about a year it was 0.5 mile

above that bridge; and during the water years 1944-45 and 1945-46 it was 0.9 mile northeast of The Los Gatos railroad station. In view of the relatively small distances between these gaging station locations and because the difference in extent of the corresponding tributary drainage areas is also relatively small, the records of discharge at these stations afford an approximate idea of the amount of water that might have been impounded by Lexington dam, had that dam been in existence. The Lexington damsite is approximately 1 mile upstream from the uppermost of the three gaging stations mentioned. Seasonal discharges of Los Gatos Creek at one or another of the three gaging stations are reported in the pertinent Water Supply Papers to have been as follows:

<u>Season</u>	<u>Discharge</u> (Ac.Ft.)	<u>Season</u>	<u>Discharge</u> (Ac.Ft.)
1930-31	1,090	1938-39	3,660
31-32	28,300	39-40	56,160
32-33	4,490	40-41	76,680
33-34	15,300	41-42	48,560
34-35	25,570	42-43	31,140
35-36	24,580	43-44	14,230
36-37	33,340	44-45	27,630
37-38	78,670	45-46	19,980

Seasonal discharge for the 16 seasons above listed thus appears to have averaged about 30,600 acre feet per water year. In another like period so large an average seasonal discharge cannot be expected inasmuch as a permit has recently been issued to San Jose Water Works under Application 11693 to collect 9,000 acre feet annually at Austrian Dam, a site scaling some 6 miles upstream from Lexington Dam. However the figures indicate that surpluses probably exist, that such surpluses are usually substantial and that in some seasons they exceed the total of the amounts named in Applications 11693 and 11751.

In the absence of showing that vested rights would be infringed

by the appropriation proposed under Application 11751 and in the light of the published record of the discharge of Los Gatos Creek and of general knowledge that irrigation in Santa Clara Valley is accomplished mainly by pumping from wells rather than by diversion of surface flow it is concluded that Application 11751 should be approved.

Summary and Conclusions

Unappropriated water at times exists in the source from which appropriation is sought under Application 11751. Such water may be taken and used as proposed in that application without injury to the protestant or to other users. The application should be approved, subject to the usual terms and conditions.

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ORDER

Application 11751 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 State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11751 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 29th day of December, 1949.



EDWARD HYATT, STATE ENGINEER

By A. D. Edmonston  
A. D. Edmonston  
Assistant State Engineer.