

STATE OF CALIFORNIA
PROCEEDINGS BEFORE THE
STATE WATER RIGHTS BOARD

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In the Matter of Application 16222 by Lloyd W. Olson to Appro-
priate from an Unnamed Creek Tributary to Los Gatos Creek in
Santa Clara County for Irrigation and Stockwatering Purposes.

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Decision A 16222 D 868

Decided December 10, 1956

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In Attendance at Investigation Conducted by the Division of
Water Resources on April 18, 1956:

Lloyd W. Olson	Applicant
William W. Lester	Protestant
William W. Lester, Jr.	Protestant
William H. Cilker	Protestant
L. D. Bohnett	Protestants' Attorney
Edward Nino	Interested party
K. L. Woodward Senior Hydraulic Engineer Division of Water Resources Department of Public Works	Representing the State Engineer

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DECISION

Substance of the Application

The application initiates an appropriation of 0.13
cubic foot per second from April 1 to November 1 of each year,

and of 4.5 acre-feet, collected annually between April 1 and November 1, in an off-stream reservoir. The point of diversion, the reservoir and the place of use are all said to be located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 32, T8S R1W, MDB&M. The water is wanted for the irrigation, from April 1 to November 1, of 12 acres of pasture and also for watering livestock. The proposed works include a small concrete diverting dam, a 4.5 acre-foot reservoir and 327 lineal feet of 4-inch pipe. According to the application, construction is complete. The applicant asserts ownership of both diversion site and place of use.

Protests

William W. Lester protests on behalf of himself and co-owners of rights held under licensed Application 1733 to divert both from the subsurface and from the surface flows of Los Gatos Creek. He states that he and his co-owners have exercised their rights under that filing ever since the effective dates thereof, that supply at their point of diversion is already deficient, that the diversion proposed by the applicant will reduce that supply further, with resultant injury to protestants.

William H. Cilker, President, Cilker-Nino Pump Company, protests the application, claiming appropriative and riparian rights that would be threatened if the application is approved. He indicates that his company operates a certain pump that drains water from a pit that is fed directly from Los Gatos Creek. He states as to that supply:

"During the months of September and October the creek flow is very small and scarcely meets the needs for fall irrigating Some years we can irrigate during these months only by operating the pump intermittently to allow times for the creek with its trickle of water to refill our pump pit. We fear that any water deviated upstream would directly reduce our water supply during these already critical months."

He states that the "Cilker-Nino" pump is located immediately north of the Roberts Road bridge.

Answers

The applicant answers each protestant by stating in effect that when water is being released at Lexington Dam neither protestant has any particular water problem, that their water problem is confined to the dry months of the year, that during said dry months water in the source from which he (the applicant) seeks to appropriate dries up before it reaches Los Gatos Creek and that the use of water which he proposes therefore cannot affect protestants' pumping operations.

Field Investigation

The applicant and the protestants with the approval of the Division of Water Resources stipulated to the submittal of the application and protests upon the official records and a field investigation was conducted on April 18, 1956 by an engineer of that Division. The applicant and the protestants were in attendance at the investigation.

Records Relied Upon

Applications 1773, 2153, 5654, 8387, 11751 and 16222 and all relevant information on file therewith; Ben Lomond and Los Gatos quadrangles and relevant Water Supply Papers, Part 11 (Pacific Slope Basins in California), United States Geological Survey; Bulletin No. 42 - "Santa Clara Investigation" - Division of Water Resources, 1933; Bulletin No. 5 - "Flow in California Streams" - Division of Engineering and Irrigation, Department of Public Works, 1923.

Information Obtained by Field Investigation

Extracts from "Report of Division of Water Resources on Application 16222" (filed with the application) are as follows:

"The investigation included an inspection of applicant's and protestants' projects and intervening stream system."

"Application 16222 seeks to appropriate ... from an unnamed stream (sometimes referred to as Coon Gulch ...) The project is complete and has allegedly been in operation for about 3 years. Water is ... conveyed by gravity ... and is discharged into the reservoir situated on the left slope of the ravine through which the stream flows. The reservoir has been created by excavation, has no dam or watershed area. The excavation is about 200 feet long by 65 feet wide and is about 15 feet deep. Overflow ... returns the water to the source about 500 feet downstream from the point of diversion."

"Water is diverted from the reservoir by means of a pump From the pump the water is forced through an underground pipe and distributed ... by a sprinkler system. Fish have been planted

in the reservoir and although the reservoir is undoubtedly maintained full as much as possible, its use during the April 1 to November 1 storage season requested appears to be more in the nature of regulation ... than seasonal storage."

"The unnamed stream ... heads at an elevation of about 2250 ... on the east slope of Santa Cruz Mountains ... and flows ... easterly ... about two miles to Los Gatos Creek within the high water line of Lexington Reservoir. The watershed is relatively steep, moderately to heavily wooded and has a drainage area of about one square mile above the point of diversion. On ... date of investigation the flow through the applicant's property was an estimated 0.75 cubic foot per second. Undoubtedly flow during heavy periods of precipitation is considerable. However according to Mr. Olson the quantity decreases as the summer progresses with surface flow ceasing some distance above the Los Gatos Creek junction normally around the end of July. He indicated that some flow is available at his point of diversion year-round, that the stream is fed by numerous springs"

"Mr. Olson stated that as surface contribution to Los Gatos Creek ceases rather early in the season, and as downstream flow in the creek is maintained by releases from Lexington Reservoir ... it is inconceivable that his project can adversely affect the protestants. The protestants argued on the other hand that flow of Los Gatos Creek is maintained by not only surface but subsurface contributions from the numerous side streams and any appropriation during the summer would be detrimental. The protestants further argued that although Lexington Reservoir has completely filled during the past winter and flow may be available throughout the summer, past experience has shown that many times little water would have been impounded in the reservoir and downstream conditions have been critical. Mr. Bohnett reminded the parties that the water stored in Lexington Reservoir belongs to the District and that use of the stored water cannot be made under the protestants' licenses, that they are entitled only to the inflow to the reservoir during the irrigation season."

"An estimated 30 cfs was being released from Lexington Reservoir at the time of investigation."

"According to Mr. Cilker a shortage at the Cilker-Nino pump usually occurs during ... August, September and October. Diversion is from a collecting gallery about 20 feet deep in the Creek channel"

"Lester, Cilker and Lester divert from the underflow of Los Gatos Creek. The well is located about 50 feet upstream from ... Vasona Dam of Santa Clara Valley Water Conservation District. The well is situated within the Vasona Reservoir area and at the time of investigation the pump column stood in about 10 feet of water. According to the Lesters the well is about 30 feet deep with the top 10 feet sealed against surface inflow from the impounded water. They claim to experience shortages on the average of one out of three years, that shortages have occurred at various times throughout the entire irrigation season and that surface flow of Los Gatos Creek prior to the construction of Lexington Reservoir seldom reached their point of diversion after May 1."

"Vasona Reservoir was spilling on April 18, 1956"

"... the applicant's project has been complete for three years and use of water as described in the application has been made during that period. He stated that the application was filed upon the advice of the U. S. Soil Conservation Service"

"About 6 acres of the place of use is situated within the watershed."

Other Information from Office Files

Under Application 1733 Permit 1499 License 520 Lester, Cilker and Lester may divert 3.5 cubic feet per second (but not in excess of a seasonal total of 510 acre-feet), from May 1 to December 1 of each year, from Los Gatos Creek at 2 points within projected Section 10, T8S, R1W, MDB&M, for agricultural purposes.

Under Application 2153 Permit 1500 License 521, Clement Nino et al. may divert 2.22 cubic feet per second from May 1 to November 15 of each year, from Los Gatos Creek, at a point within projected Section 16, T8S R1W, MDB&M, for agricultural purposes. According to a report covering an inspection made in connection with Application 2153 on September 14, 1924 diversion thereunder is effected by means of a well, 10 feet square by 30 feet deep from the bottom of which a gallery, 50 feet long, extends to the creek bed.

Under Application 5154 Permit 3010, Santa Clara Valley Water Conservation District may divert a total of 10,000 acre-feet between November 15 of each year and May 1 of the next, at a rate not exceeding 80 cubic feet per second, from Los Gatos Creek, at a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, T8S R1W, MDB&M, for irrigation and domestic purposes within the District boundaries, the water to be spread, percolated into underground storage and recovered at various wells by individual landowners.

Under Application 8387 Permit 4921 Santa Clara Valley Water Conservation District may divert 4,000 acre-feet per annum, without limitation as to time, from Los Gatos Creek, at a point within projected Section 9, T8S R1W, MDB&M, for irrigation and incidental domestic purposes on lands within the District boundaries. A feature of the works under this application is Vasona Reservoir, located within the above named Section 9 and the adjoining Section 16. That reservoir is 79 acres in surface

area, 750 acre-feet in capacity. A supplement to Application 8387 reads in part as follows:

"The storage described herein will be used as a regulator of flood flows. Releases will occur when the flow subsides so that the reservoir will fill and empty repeatedly during the season. Percolation will occur in the reservoir itself, and in selected areas to be served by the canal (leading therefrom). Recovery of the water from ... (underground storage) will be made by pumping plants on the various ranches within the District."

Under Application 11751 Permit 7689 Santa Clara Valley Water Conservation District may divert 30,000 acre-feet per annum, without limitation as to time, from Los Gatos Creek, at a point within the SE $\frac{1}{4}$ of Section 29, T8S R1W, MDB&M, for domestic and irrigation purposes. A dam at the point of diversion creates Lexington Reservoir, 450 acres in surface area and 25,000 acre-feet in capacity. The purpose of the reservoir is to contain flood crests that would otherwise waste, and facilitate their charging into the ground water storage basin underlying the district, releases from the reservoir being spread upon receptive areas both within the stream channel and apart therefrom, recovery to be made by private users and/or by public agencies acting therefor. Lexington Reservoir is reported to have commenced operating in 1953.

Under Application 11693 Permit 7154 San Jose Water Works may divert 9,000 acre-feet between November 30 and April 30 of each water year, from Los Gatos Creek at Austrian Dam which is located within Section 23 of T9S R1W, MDB&M, and

creates a reservoir 95 acres in surface area and 6,000 acre-feet in capacity, the water to be used for domestic, municipal and industrial purposes within San Jose, Los Gatos, Saratoga and adjacent territory. Construction of Austrian Dam is reported to have been completed in 1951.

The Water Supply Papers contain records of the flow of Los Gatos Creek since January, 1930. Measurements were first made at a station called "Los Gatos Creek at Los Gatos." In 1944 the point of measurement was shifted about 1.5 miles downstream and renamed "Los Gatos Creek below Los Gatos." The drainage areas above the two points of measurement are reported to be 39.7 and 43.6 square miles, respectively. Both points of measurement are above Vasona Reservoir and below Lexington Reservoir. According to the published record, annual flows past one or the other of the two points of measurement have been as follows:

Water year:	Flow*	Water year:	Flow*
1929-30	15,900**	1941-42	48,560
30-31	1,090	42-43	31,140
31-32	28,300	43-44	14,296
32-33	4,490	44-45	27,630
33-34	15,300	45-46	19,980
34-35	25,570	46-47	5,300
35-36	24,580	47-48	7,360
36-37	33,340	48-49	20,530
37-38	78,670	49-50	9,940
38-39	3,660	50-51	38,020
39-40	56,160	51-52	72,610
1940-41	76,680	1952-53	19,090

* in acre-feet.

** January through September only.

Water distances from the applicant's proposed point of diversion scale on the Ben Lomond and/or Los Gatos quadrangles approximately as follows:

To the junction of applicant's unnamed source with Lexington Reservoir at spillway elevation	1.0 mile
To Lexington Dam	2.4 miles
To Protestant Cilker's point of diversion	5.0 miles
To point of diversion of the protestants Lester et al. (practically at Vasona Dam)	6.1 miles

Bulletin No. 42 - Santa Clara Investigation" - Division of Water Resources, 1933, discusses the water supply situation in Santa Clara Valley as it existed at that time, presents certain significant data then available as to precipitation, stream flow, ground water levels and related matters and sets forth conclusions that that investigation was deemed to warrant. Selected extracts from said bulletin are as follows:

"As a result of general alarm over the continued retreat of ground water ... in northern Santa Clara County the Division ... was requested ... to undertake an investigation"

"Between the mountain and foothill areas ... and the district boundary line there lies a valley area ... which is dependent for its water supply upon runoff ... and local precipitation."

"This report covers an investigation ... in the way of a determination of ... accretions and losses along the stream channels ... the behavior of ground water ... and the relation of normal recharge to draft."

"The general ground water level ... receded 95 feet between ... 1915 and ... 1933."

"This decrease ... should not in itself be construed to mean that under normal conditions the present draft exceeds replenishment."

"The water level in a ground water basin represents a balance between replenishment, whether natural or stimulated, and losses, whether by pumping or natural waste. The disturbance of either of these factors will affect this balance and establish a new level."

"Natural replenishment of ground water in Santa Clara Valley has been profoundly affected ... by lack of rainfall and resulting diminished streamflow."

"The trend of the hydrograph showing a long term record of general ground water levels in the valley ... indicates that draft has not exceeded replenishment in years of normal precipitation."

"Conservation of the surface waste from streams debouching into and traversing Santa Clara Valley affords the best means of restoring ground water level"

"Diversions for irrigation and domestic use from surface streams within the valley floor are unimportant because of the short duration of flow in these streams, irrigation and domestic supplies ... being drawn for the most part from ground water."

"The fact that there has been a recession of the ground water level ... does not in itself prove that the draft under normal conditions will over a period of years exceed replenishment. The water level would have fallen in Santa Clara Valley in recent years had there been no pumping and it may be expected to rise again when a series of years of normal rainfall occurs in spite of the pumping. It will not however rise to its former level because of the increasing pumping."

Bulletin No. 5 - "Flow in California Streams" - indicates (in Table 111 thereof) that natural flow in Los Gatos Creek ranges from nothing to 1,813 acre-feet and averages 566 acre-feet per annum, per square mile of tributary watershed. According to the same reference the total runoff from the Los Gatos Creek watershed which occurs in the course of a normal year is distributed somewhat as follows:

Month	: Percentage of : annual flow	: Acre-feet per : square mile	: Equivalent : steady flow : in cfs
January	28.9	163.7	2.67
February	17.7	100.2	2.21
March	35.9	203.0	3.30
*April	8.5	48.1	0.81
*May	2.2	12.5	.20
*June	1.0	5.7	.10
*July	0.5	2.8	.05
*August	0.3	1.7	.03
*September	0.3	1.7	.03
*October	0.2	1.1	.02
November	0.3	1.7	.03
December	<u>4.2</u>	<u>23.8</u>	.39
Total	100.0	566.0	

* Months during which applicant proposes to divert.

Discussion

According to the last preceding tabulation, flow at the applicant's proposed point of diversion is sufficient in a normal year to allow the described reservoir to fill once in either April or May and to allow the diversion of all or at least a portion of the 0.13 cubic foot per second which the applicant seeks, in every month of his proposed diversion period.

Neither the statements contained in the protests nor the information obtained by field investigation or otherwise indicates that any diminution of flow in Los Gatos Creek that might result from the applicant's proposed development will injure the protestants or any other downstream user. Flows reaching the protestants are at times scanty, as those parties allege. According to the Water Supply Papers, flows in Los Gatos Creek sometimes recede, in summer and fall, to very low values. Such subnormalities of flow however are manifestations of nature and would not be affected materially by the appropriation which the applicant seeks. There is no contention that supply becomes deficient before August. The applicant asserts that surface flow in his proposed source usually fails, at a point some distance above the junction of that stream with Los Gatos Creek, by the end of July. Since, apparently, the flow in the applicant's source is not required for the satisfaction of downstream rights before about the end of July and cannot reach any downstream user thereafter, that flow, insofar as it persists at the applicant's proposed point of diversion, appears to be subject to appropriation.

The operations of Santa Clara Valley Water Conservation District, holder of approved Applications 5154, 8387 and 11751, appear to be directed toward the conservation of flood flows in Los Gatos Creek. It is not apparent that such operations can be hindered materially by the appropriation sought by Applicant Olson. For that reason and because Santa Clara Valley Water Conservation

District did not protest, the existence of Application 5154, 8387 and 11751 does not constitute a bar to the approval of Application 16222.

Conclusion

The information indicates that unappropriated water exists in the source from which the applicant seeks to appropriate and that such water may be taken and used in the manner proposed by the applicant without injury to parties downstream. It is the opinion therefore of the State Water Rights Board (successor in jurisdiction to the Division of Water Resources on July 5, 1956 in matters relating to the appropriation of water) that Application 16222 should be approved and that a permit should be issued to the applicant, subject to the usual terms and conditions.

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ORDER

Application 16222 for a permit to appropriate unappropriated water having been filed with the Division of Water Resources as above stated, protests having been filed, stipulations having been submitted, a field investigation having been conducted and the State Water Rights Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16222 be approved and that a permit be issued to the applicant, subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento this 10th day of December, 1956.

/s/ Henry Holsinger
Henry Holsinger, Chairman

/s/ W. P. Rowe
W. P. Rowe, Member

/s/ John B. Evans
John B. Evans, Member