

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

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In the Matter of Application Number 4098 of the United States Forest Service and Application Number 4297 of Elma and A. D. Holloway for a permit to appropriate water from unnamed SPRINGS in Millard Canyon, Los Angeles County for Domestic Purposes.

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DECISION NO. A 4098 - 4297 D - 135
Decided December 27, 1926

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APPEARANCES AT HEARING HELD May 18th and 20, 1926.

For Applicants:

United States Forest Service
Elma and A. D. Holloway

H. P. Dechant
Elma Holloway

For Protestants:

La Vina, a corporation and J. R. Giddings

A. L. Rowland
Raymond G. Thompson

EXAMINER: Edward Hyatt, Jr., Chief of Division of Water Rights

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O P I N I O N

Application No. 4098 was filed July 17, 1924. It proposes an appropriation of 0.05 cubic foot per second throughout the entire year from an unnamed spring in Millard Canyon for domestic purposes in the Millard Canyon Recreational Tract of Angeles National Forest in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T 2 N, R 12 W, S.B.M. It was protested by J. R. Giddings and La Vina, a corporation.

Application No. 4297 was filed November 5, 1924. It proposes an appropriation of 0.002 cubic foot per second from January 1st to October 31st from an unnamed spring in Millard Canyon for domestic purposes on Lots 22 and 23 of the Millard Canyon Tract of the Angeles National Forest being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of

of Section 33, T 2 N, R 12 W, S.B.M. It was protested by La Vina, a corporation.

These two applications were completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and being protested were set for a public hearing at Room 1026 San Finance Building, Los Angeles, California, at 10:00 o'clock a.m. on May 18, 1926 and continued to May 20, 1926. Of this hearing, applicants and protestants were duly notified.

In a joint protest by La Vina, a corporation and J. R. Giddings, directed against Application 4098 of the Forest Service, the protestants claim a right to the use of all of the water in Millard Canyon and its tributaries based upon prior appropriation and use for the past twenty years including the waters flowing from the unnamed spring from which the Forest Service seeks to appropriate and allege in effect that the proposed appropriation of the Forest Service would deprive them of use of water which they have enjoyed for the last twenty years or more and that the United States Forest Service has no right to appropriate waters for domestic use of its special use permittees.

La Vina, a corporation, protests the proposed appropriation under Application 4287 of Elma Holloway and A. D. Holloway under the same claims as were set forth in the protest against Application 4098. Mr. Giddings however entered no protest against this application.

Millard Canyon, a tributary of the Arroyo Seco is situated in the San Gabriel Mountains just north of the City of Pasadena. From its junction with the Arroyo Seco it extends in a general northeasterly direction to its source which is about one-half mile west of Mt. Lowe. From the easterly line of Section 32, T 2 N, R 12 W, S.B.B. & M. the canyon is on United States government lands. Although the canyon is very narrow and the sides steep there are at

various places suitable sites for recreational tracts and the Forest Service has issued special use permits from time to time to persons who desire to avail themselves of recreational privileges.

About 40 or 45 years ago Luna and E. W. Giddings came into possession of the NE $\frac{1}{4}$ of Section 32 and proceeded to divert water from Millard Canyon through pipe lines which were laid at that time. On June 22, 1900, they filed in the office of the County Recorder of Los Angeles County a notice of appropriation of all the waters flowing in Millard Canyon, for irrigation, domestic, mechanical and stock watering purposes, the notice stating that they appropriated for such purposes the water that flowed or that might flow in Millard Canyon and its tributaries or that could be developed by means of tunnels and cuts in the canyon or its tributaries above the east line of Section 32 up to the dam in Millard Canyon just below the tributary known as Saucer Canyon to the extent of 160 miners inches measured under a four inch pressure. Under this appropriation water was used on their lands and for the supplying of the Pasadena Cemetery Association.

At a later date Mr. J. R. Giddings came into possession of this right and by an agreement with the Lincoln Avenue Company, that company obtained all the waters in Millard Canyon above the falls, designated as such on applicants' Exhibit No. 1 with the exception of the water from Saucer Canyon, Mr. Giddings still maintaining the right to the flow in Millard Canyon below the falls and the water in Saucer Canyon.

About the year 1911 La Vina, a non-profit benevolent corporation, organized for the purpose of providing a place for the cure of people affected with tuberculosis--acquired a tract of land comprising about 235 acres in Section 32, T 2 N, R 12 W, and Section 5, T 1 N, R 12 W, S.E.B. & M. together with a half interest in the water right of J. R. Giddings.

The several intakes and tunnels from which the protestants divert the waters of Millard Canyon are designated upon applicants' Exhibit "A" filed at

the hearing by the figures 1 to 7 inclusive, the point of the applicants proposed diversion being shown by the letter "A".

Prior to about two years ago the water from the tunnels and intakes 1 to 6 inclusive was conveyed to a division box which was located about 3/4 mile below point 7 and there divided equally between La Vina and Giddings. Since that time however a new division box was installed on Lot 43 at a point designated as "Sand box No. 1" in the exhibit above referred to.

The lowest point on Millard Canyon at which La Vina has taken the surface waters of Millard Canyon has been at dam No. 2 located at point 5. Water has however been conveyed to the division box from the tunnel at point 6 together with the waters diverted above and there divided equally between the protestants.

About the year 1912 F. W. Ford and Myrel Gill constructed cabins a short distance east of Section 32 in Millard Canyon and proceeded to use water which the protestant La Vina claimed interfered with its rights. An injunction suit was brought against them and was apparently settled by stipulation between the parties at interest which was confirmed by court judgment on May 21, 1913.

Under this judgment it was decreed that La Vina and J. R. Giddings were the owners as tenants in common, each owning an undivided one-half interest of all water flowing in Millard Canyon below the submerged dam of the Lincoln Avenue Water Company, situated a short distance above the falls of said Canyon, and in all the tributaries of said Canyon below said dam, and of all the water flowing in Saucer Canyon, a tributary of Millard Canyon branching off above said submerged dam, and all the water flowing or developed in the tunnels of said Saucer Canyon, and all water flowing or developed in the tunnels in said Millard Canyon below the falls including the tunnel high upon the northwesterly bank of said Canyon (but excepting the water, if any, flowing or developed in the tunnel heretofore constructed by said defendant F. W. Ford).

The protestants claim that the injunction following this judgment was violated by the defendants and that for this reason the defendants were deprived of using any water whatever from Millard Canyon.

In the latter part of 1919 or the early part of 1920 one Shutt bought out Mrs. Gill's holdings with the understanding that he had the right to use water from the spring designated as No. 6 on Applicants Exhibit No. 1 and obtained a right of way from the Forest Service for his pipe line. Two years later La Vina connected the pipe line from this spring to its main pipe line but allowed Shutt to maintain his connection therewith for more than a year afterwards. La Vina then moved the pipe line completely shutting off the supply of Mr. Shutt. Although Mr. Shutt believed that he had a valid right to the use of water from Spring 6 in order to avoid litigation he abandoned this source and proceeded to search for another.

He had noticed that at Spring 6 there were bay trees and other vegetation which were indicative of moisture and was of the opinion that if similar vegetation could be discovered he might be able to discover a source of supply.

In a small canyon or draw adjacent to the one in which spring 6 is located such a group of bay trees, reeds and other vegetation indicative of moisture was discovered extending a distance of about 50 or 75 feet down the canyon and digging into the hillside near the upper edge of this spot, Mr. Shutt discovered a small quantity of water percolating over what appeared to be a clay ridge in the draw at the point designated as "A".

The point "A" is about 214 feet above the division box of the protestants and is about 425 feet distant from the main Millard Canyon and from the junction of the two canyons to the small area upon which vegetation indicative of moisture grows, there is a growth of chamise, oak and other vegetation indicative of a dry soil and there was no well defined channel down the canyon which would indicate that any water from "A" ever arrived at the main canyon.

It appears clear that the supply developed at Spring A by the applicant was entirely dissipated by evaporation and transpiration within a distance of about 75 feet from the point "A" and that it did not contribute to the supply of the protestants. Protestant Giddings admitted that he had never been up to Spring A and that he thought that the water from the spring would not have very much effect on the supply of the Canyon.

Point "A" is about 270 feet distant from Point 6 and about 14 feet lower in elevation and between the two points there is a well defined ridge which is about 25 feet higher than Point 6. At a point approximately 300 feet south of Point 6 there also appears to be a decided outcropping of rock which apparently extends in a northeasterly direction to the main ridge between the two points and unless the ridge is penetrated by a tunnel from Point "A" in the direction of Point 6 there would appear to be no danger of the applicants development interfering with that of the protestants but if such interference were made the protestants would be afforded ample protection through due process of law.

After Mr. Shutt discovered the spring he posted a notice of appropriation and on January 7, 1924, he and his associates filed Application 3786 thereon. The forest supervisor however refused to give them a right of access believing that the Forest Service should control this source of supply. He suggested that the Forest Service file an application on this source with the understanding that the special use permittees form a mutual water users association--the applicants Shutt et al having first right to the use of water--and if any surplus water were developed others might join with them in the use of water provided that they would share in the expense of developing the supply.

This suggestion was acceptable to Mr. Shutt and his associates and on June 20, 1924 their application was cancelled and soon afterwards on July 17, 1924 the Forest Service filed Application 4098.

About September 1925, subsequent to the filing of Application 4098 by the Forest Service the protestant La Vina constructed a concrete dam at point 7 for the purpose of intercepting all flow, either surface or underground that might be available at that point. This was done presumably on account of the dry season of 1924 and 1925.

About twenty-five years ago the protestant Giddings had constructed a temporary dam at that point for the purpose of picking up what water there was in the stream and conveyed the water by means of an earth ditch to a pipe line for his use. Testimony presented at the hearing however indicated that the ditch was in such a poor condition that more water escaped therefrom into the main channel of the stream than was conducted to his pipe line.

This earth dam has been replaced by La Vina by the concrete dam described above which has never been used. It has been constructed to bedrock and the protestant La Vina claims that it will intercept all water both surface and underground at that point. Testimony was presented at the hearing to the effect that some water was passing through the dam to the channel below but whether this water was seepage through the dam, or under the dam or through the gate in the dam it is not possible to state as the testimony in this regard was somewhat conflicting.

Prior to the building of the dam at Point 7 no attempt had been made by either of the protestants to intercept the underflow of the canyon and as this dam was built as the result of a season of subnormal runoff it would appear that during years of normal runoff there had been sufficient surface flow to meet their needs or else during the entire forty-five years which water had been used there would have been some attempt made to obtain this flow.

Aside from the temporary earth dam and ditch constructed by Giddings up to the construction of the concrete dam at Point 7, no attempt had been made by the protestants to catch any of the flood waters of the canyon over and above that which could be carried by their present pipe system.

Most of the development in Millard Canyon was done prior to the notice of appropriation filed by Mr. Giddings in 1900, the work done subsequent to that time consisting principally in maintaining and enlarging somewhat the existing works and the burden of improvement has fallen largely upon La Vina because Mr. Giddings has not been inclined to join in the expenditure of money necessary for this purpose.

Testimony presented at the hearing would indicate that more water in the past had been lost by leakage from the diversion works than that which might be developed by the applicant.

There does not appear to have been a consistent endeavor on the part of the protestants to develop the entire flow of the canyon progressively. Even at the time of the hearing there was a cavern in the tunnel No. 6 which the protestants had made no attempt to clear out and the pipe line leading from Dam 7 had not been installed.

It would therefore appear that water which had not been developed in the Canyon for the past forty-five years could be properly called unappropriated water and as such is subject to appropriation.

The protestants claim that as the applicant Forest Service is not proposing to appropriate water for its own benefit but for the benefit of others, it is not entitled to make the appropriation.

Relative to this objection on the part of the protestants it may be said that under the Water Commission Act any person, firm, association or corporation may apply for an appropriation and there is nothing in the Act which makes it obligatory that the person, firm, association or corporation filing the application is required to derive a direct benefit from the use of water thereunder. In this particular case however the Forest Service does derive a benefit in that it receives a compensation for the special use permits which are issued, and without a water supply the Forest Service would not be able to lease any of their home sites.

The protestants also claim that the appropriation should not be allowed for sanitary purposes. This phase does not come under the jurisdiction of this office and we can not deny any application on the grounds of possible pollution of the water supply. This matter comes under the jurisdiction of the State Board of Health and if insanitary conditions exist in the canyon the matter should be taken up with that body.

From testimony presented at the hearing it would appear that water was first developed at Spring 3 about forty-five years ago by Mr. Giddings. The use of the water was made for about five or six years and then discontinued for a period of about twenty years until Mr. Cabot, foreman of the La Vina Rancho built a cabin at the mouth of the canyon in which the spring is located and made some use of the water. The use of the water appears to have been again discontinued until about a year ago when La Vina, noticing that all the water from the spring did not reach its intake built a wall around the spring and piped the water to its main line in Hillard Canyon. Mrs. Holloway had intended to file on this spring but before she did so it was walled up by La Vina.

Just above this spring the waters of which are used by La Vina there are two other distinct seeps coming from a wall on the right side of the canyon. The larger of these seeps is the one upon which Mrs. Holloway has filed and is about 10 or 15 feet above the diversion point of La Vina.

The testimony presented at the hearing as to the conditions which existed at Spring 3 was very meager and before further action in the matter of Application 4297 is taken a field investigation should be made.

ORDER

Applications Numbers 4098 and 4297 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held, and the Division of Water Rights now being fully informed in the premises appertaining to Application 4098

but requiring additional information as to certain physical conditions in regard to Application Number 4297:

IT IS HEREBY ORDERED that said Application Number 4098 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate

IT IS FURTHER ORDERED that action upon Application Number 4297 be withheld until further order is entered.

Dated at Sacramento, California, this 27th day of December ,

1926

(Edward Hyatt, Jr.)

CHIEF OF DIVISION OF WATER RIGHTS

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