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

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In the Matter of Applications 3808 of Henry Hay as Trustee for  
Valencia Water Company, Hollenbeck Street Water Company,  
Valencia Heights Water Company, Hepner Water Company,  
Lewis S. McClain, Lillian Smith McClain, D. S. Unruh,  
J. H. Henry, and Lewis S. Thorpe; and San Dimas Water  
Company to appropriate from Puddingstone Canyon in  
Los Angeles County for Irrigation Purposes.

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DECISION A 3808 D- #246

Decided December 19, 1929

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APPEARANCES AT HEARING HELD IN LOS ANGELES September 13, 1928.

For Applicant -

Henry Hay Trustee et al

A. M. Pence

For Protestants -

San Dimas Water Company, Arroyo Ditch Co., et al )  
La Puente Cooperative Water Company, et al )  
Azusa Irrigating Company, et al )

James M. Anderson  
and  
H. S. Gilman

City of Pasadena

James H. Howard

Ontario Investment Company

C. E. Sears

City of Long Beach

C. A. Windham

Roger P. Dalton

No appearance

EXAMINER: Harold Conkling, Chief of Division of Water Rights,  
Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF APPLICATION

Application 3808 was filed by Henry Hay, Trustee for Valencia Water Company, Valencia Heights Water Company and Hollenbeck Street Water Company and others who are operating pumping plants along Walnut Creek. The wells of these applicants depend largely upon the drainage of Puddingstone watershed for their supply and as the Puddingstone Dam, which the Los Angeles County Flood Control District proposes to construct would to a certain extent prevent the floodwaters from entering their natural percolation channels, Application 3808 was filed on January 24, 1924, for the purpose of substituting a gravity supply for applicants' present pumping system.

As originally filed the application proposed an appropriation of 40 cubic feet per second of direct diversion and 20,000 acre feet per annum of storage from October 1st to June 1st of each season from the San Gabriel River and San Dimas and Puddingstone streams. Storage was to be made in the proposed San Gabriel, San Dimas and Puddingstone Reservoirs. The water was to be used for irrigation purposes upon 3,000 acres of land as shown upon a map filed with this office.

On April 29, 1929, one-half interest was assigned to the San Dimas Water Company and the application amended to include the lands of the San Dimas Water Company in the place of use.

The application has been amended from time to time and in its present amended form which has been accepted by this office proposes an appropriation of 16.8 cubic feet per second of natural and/or regulated flow from Puddingstone Canyon resulting from the collection and release of waters in Puddingstone Reservoir by the Los Angeles County Flood Control District,

the impounding dam of which reservoir is located within the NW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 15, T 1 S, R 9 W, S.B.B. & M. It is proposed to divert the water throughout the entire year and the gross diversion under the application is not to exceed 10,000 acre feet per annum. The place of use is described as follows:

San Dimas Water Company: 1927.21 acres in Sections 2 to 11, both inclusive and Sections 16 and 17, T 1 S, R 9 W, S.B.B. & M.

Henry Hay, et al: 2495 acres in Sections 8, 17, 19 and 30, T 1 S, R 9 W; Sections 23, 24, 25, 26, 27, 34 and 35, T 1 S, R 10 W, S.B.B. & M. as per maps filed with the Division of Water Resources.

Prior to the hearing and the transfer of one-half interest in the application to the San Dimas Water Company, the application was protested by the following:

1. San Dimas Water Company
2. City of Pasadena
3. City of Long Beach
4. Arroyo Ditch Company, et al
5. La Puente Cooperative Water Company, et al
6. Azusa Irrigating Company, et al
7. The Ontario Investment Company
8. Roger P. Dalton.

#### PROTESTS

##### 1. The San Dimas Water Company.

The San Dimas Water Company under Application 3532, Permit 2578 claimed prior vested rights to appropriate from Puddingstone Reservoir and Walnut Creek and alleged that the proposed diversion may interfere with its rights.

##### 2. The City of Pasadena.

The City of Pasadena protested Application 3808 insofar as it

might seek to appropriate water from the San Gabriel River above the mouth of the Canyon.

3. The City of Long Beach.

The City of Long Beach alleges in effect that any diversion of the waters of the San Gabriel River whether natural or flood flow would result in the depletion of the underground storage of the San Gabriel Basin, from the lower end of which the City has obtained its supply under riparian rights and continuous use since 1883.

4. The Arroyo Ditch Company, et al

5. La Puente Cooperative Water Company, et al

6. Azusa Irrigating Company, et al

These protestants object to any diversion which may be made from the San Gabriel River and allege in effect that there are no waters subject to appropriation from this source.

7. The Ontario Investment Company

The Ontario Investment Company claims ownership of lands along Walnut Creek wash and alleges in effect that if waters are impounded in Puddingstone Canyon Reservoir and afterward diverted to lands below its properties, the ground water level beneath will be lowered.

8. Roger P. Dalton

Roger P. Dalton alleges in effect that any further draft upon the waters of the San Gabriel River will cause a recession in the water plane in the San Gabriel Canyon thereby making his pumping costs prohibitive.

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

Application 3808 was completed in accordance with the Water Commission Act and the rules and regulations of the Division of Water Rights and being protested was set for a public hearing in accordance with Section 1a

of the Water Commission Act on September 13, 1928, at 2:00 P.M. o'clock in Room 1026 Associated Realty Building, Los Angeles, California. Of this hearing applicant and protestants were duly notified.

#### DISCUSSION OF PROTESTS

Apparently all of the protests with the exception of those of the San Dimas Water Company and the Ontario Investment Company were filed for the reason that it was believed applicant proposed to appropriate waters of the San Gabriel River. The fact was brought out at the hearing however that Application 3808 did not in itself involve any diversion from the San Gabriel River or San Dimas Canyon but merely involved a use of such waters natural or foreign as might arrive at Puddingstone Reservoir. With this understanding the protest of the City of Pasadena was withdrawn at the hearing.

Although the protests of the Arroyo Ditch Company, et al, La Puente Water Company, et al and Azusa Irrigating Company, et al, were not formally withdrawn at the hearing it was agreed that their protests might be considered withdrawn unless the Division were notified to the contrary. As nothing further has been heard from these protestants, their protests may also be considered withdrawn.

In consideration of the assignment of one-half interest in Application 3808 to the San Dimas Water Company its protest was withdrawn on August 2, 1929.

The Ontario Investment Company appears to have filed its protest in an abundance of precaution not knowing what effect the proposed diversion would have upon the ground waters from which it obtains its supply. No testimony was introduced in support of its contention of possible injury and hav-

ing failed to submit evidence in conformation of its allegations it has failed to support the burden of proof appropriate to a moving party and therefore its objection is overruled.

The property of Roger P. Dalton is located at the mouth of San Gabriel Gorge about two miles north of Azusa and above the confluence of Walnut Creek and the San Gabriel River and can in no way be affected by the proposed appropriation. Mr. Dalton was neither present nor represented at the hearing and failed to submit evidence in support of his contention.

The City of Long Beach offered no evidence at the hearing in support of its protest but denied the authority of this office to hear the matter upon the grounds that any attempt to allocate the waters of the San Gabriel River would be unconstitutional, that there are no unappropriated waters in the San Gabriel River and that protestant and others are entitled to the use of the waters of said river by virtue of riparian ownership and acquired prescriptive rights.

In connection with this protest it may be observed that the primary purpose of the application would appear to be to make available to the applicants the wild and vagrant waters captured by the Los Angeles County Flood Control District in its Puddingstone Reservoir. Inasmuch as these waters would in general, if not always, be captured at a time when no trespass would result upon the owners of vested rights downstream and when once so captured and stored are divorced from all rightful claim of such owners of prior vested rights they are held to be subject to appropriation after release from storage. Upon this point the Division has previously ruled in the case of Applications 3328, etc., D 199. The protest of the City of Long Beach may therefore be dismissed.

CONCLUSION

The purpose to which applicant proposes to put the water is a useful and beneficial one. Henry Hay has written authority from the several water companies and individual pump owners to act as trustee for them and the applicants have been assured by the Los Angeles County Flood Control District that it will arrange for the storage of water in Puddingstone Canyon, provided that applicants hold all rights below the reservoir and whenever Application 3808 is approved by this office.

In view of the above and the fact that there will be unappropriated water made available by the operation of the Puddingstone Reservoir it is the opinion of this office that Application 3808 should be approved in its present amended form.

ORDER

Application 3808 for a permit 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 Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 3808 be approved and a permit granted to the applicants 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 27th day of December, 1929.

EDWARD HYATT, STATE ENGINEER

BY

Harold Consling  
Deputy

WES:MP