

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

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In the Matter of Application 6560 of Robert C. McCall
to appropriate water from a stream in Storm Canyon
tributary to Vallecitas Valley in San Diego County
for irrigation and domestic purposes.

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DECISION A 6560 D 274

Decided *November 1, 1930*

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APPEARANCES AT HEARING HELD AT SAN DIEGO June 4, 1930

For Applicant

Robert C. McCall

J. L. Hofflund, Atty.
T. D. McCall, Agent

For Protestant

Ralph S. Benton

R. C. Springer

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

GENERAL FEATURES OF APPLICATION

Application 6560 was filed July 5, 1929, by Robert C. McCall. It proposes an appropriation of 2.0 cubic feet per second from a stream in Storm Canyon tributary to Vallecitas Valley in San Diego County to be diverted throughout the entire year for irrigation and domestic purposes on lands as follows:

$\frac{1}{2}$ of NE $\frac{1}{4}$ and NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, T 14 S, R 5 E, S.B.B.M.
All of Section 24, T 14 S, R 5 E, S.B.E. & M.

The point of diversion is located within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 35, T 14 S, R 5 E, M.D.B. & M. The application was protested by Ralph S. Benton.

PROTEST

The protest of Ralph S. Benton was filed September 14, 1929. At the time of filing of the protest and prior to the hearing Application 6360 proposed an appropriation of 3 cubic feet per second to be used for irrigation and domestic purposes on 320 acres of land located as follows:

80 acres within	N $\frac{1}{2}$ NW $\frac{1}{4}$	Section 25,	T 14 S,	R 5 E,	S.B.B. & M.
40 "	" SW $\frac{1}{4}$ NW $\frac{1}{4}$	"	"	"	"
40 "	" NW $\frac{1}{4}$ SW $\frac{1}{4}$	"	"	"	"
40 "	" SE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 26,	"	"	"
40 "	" NE $\frac{1}{4}$ SE $\frac{1}{4}$	"	"	"	"
40 "	" SW $\frac{1}{4}$ SE $\frac{1}{4}$	"	"	"	"
40 "	" NE $\frac{1}{4}$ NW $\frac{1}{4}$	Section 35,	"	"	"

Mr. Benton claims prior vested rights to the waters of Storm Canyon by virtue of riparian ownership and past use for domestic and stock watering purposes and claims the ownership of land in Section 25 described as the place of use in Application 6360 which he "plans" to irrigate. He alleges in effect that it would be impossible for applicant to divert water as proposed without trespassing upon his property or interfering with his rights.

PHYSIOGRAPHY AND HYDROGRAPHY

The proposed source of diversion is a small mountain stream originating from springs and surface runoff on the northerly slope of the Laguna Mountains in Section 34, T 14 S, R 5 E, S.B.B. & M. During about three months of the year the stream flows on the surface in Storm Canyon in a general northeasterly direction to its junction with Vallecitos Creek but during the remainder of the year the water sinks into an alluvial formation at the base of the Laguna Mountains at a point in the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 26, T 14 S,

5 E, S.B.E. & M. and does not rise again until it reaches a point in Sections 10 and 11, T 14 S, R 5 E, in the playa of the Vallecitas, brought to the surface by a bedrock barrier crossing Vallecitas Creek. No measurements of stream flow are available although it appears that on November 1, 1929, the flow was estimated as being about one second foot.

APPLICATIONS AMENDED AT HEARING

It appears that the ownership of Section 25 a portion of which was described as the place of use in Application 6360 is claimed by both applicant and protestant. It also appears that when Application 6360 was filed Mr. McCall was mistaken in the description of the lands upon which he wished to apply the water and at the hearing requested that the application be amended as follows: One cubic foot per second to be used for irrigation purposes upon $\frac{1}{4}$ of NE $\frac{1}{4}$ and NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 26, T 14 S, R 5 E, S.B.E. & M. and one cubic foot per second to be used for stock watering purposes upon all of Section 24, T 14 S, R 5 E, S.B.E. & M. The request to make amendment was granted at the hearing (See pages 41, 42 of Transcript) and the application was amended accordingly. Domestic use is generally accepted by this office as including stock watering use no change was necessary in the nature of use.

USE OF WATER BY PROTESTANT

As stated above, the stream from which the applicant proposes to appropriate, ordinarily sinks into the alluvial slope of the Laguna Mountains before reaching Section 25 on which the protestant claims his property is located but which ownership is in dispute. At times of freshet, however, which usually occur during the months of April, May and June, water flows on the surface through Section 25 and testimony presented at the hearing indicated that the protestant has watered as many as 250 head of stock from the stream.

The number watered varies considerably however and during the last year consisted of only a few.

The water, after sinking, rises again on Sections 10 and 11, T 14 S, R 6 E, and it appears that three or four hundred head of stock have been watered on Section 10 which belongs to the protestant although testimony presented at the hearing on behalf of applicant indicated that after rising the water was of very poor quality. Since protestant has owned the property, apparently no use has been made of the water except for intermittent stock watering purposes and no water has been diverted by him from the stream bed although protestant stated at the hearing that he contemplated raising some barley in the future. This statement in itself would indicate that there was water available for appropriation.

CONCLUSION

There appears to be water in Storm Canyon which is subject to appropriation during the greater part of the year, by the applicant. The use to which applicant proposes to put the water is a useful and beneficial one and although a portion of the place of use is not owned by him, it is held under Desert Entry Declaration by one Nicholas Zorotovich who has an agreement with the applicant covering the use of sufficient water from the proposed appropriation to properly irrigate the land. It is therefore the opinion of this office that Application 6360 should be approved subject to prior vested rights.

ORDER

Application 6360 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 Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 6360 be approved and that a permit be issued 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 1st day of November, 1930.

EDWARD HYATT, State Engineer

BY Harold Conkling
Deputy

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