

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 12168 of Jacque L. Duvall and Associates to Appropriate Water from Van Dusen Canyon Creek and from an Unnamed Spring, both Tributary to Baldwin Lake, in San Bernardino County for Mining and Domestic Purposes.

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Decision A. 12168 D. 628

Decided October 21, 1949

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APPEARANCES AT HEARING HELD AT SAN BERNARDINO FEBRUARY 1, 1949:

For the Applicant

Jacque L. Duvall and Associates

(Curtis & Curtis
(Attorneys at Law
(by Jesse W. Curtis, Jr.

For the Protestants

W. R. Shay et al.

(Surr & Hellyer
(Attorneys at Law
(by John B. Surr

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

Also present: J.J.Heacock, Associate Hydraulic Engineer, Division of Water Resources, Department of Public Works.

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O P I N I O N

General Description of the Proposed Development

Application 12168 by Jacque L. Duvall and Associates was filed on November 24, 1947. It contemplates the diversion throughout the year of 10 miners inches from Van Dusen (or Van Duzen) Canyon Creek for mining purposes and 0.003 cubic foot per second from an unnamed spring, for domestic purposes. The proposed points of diversion are described as lying within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of

of Section 2, T 2 N, R 1 E, SBB&M, and within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11 of the same township, respectively. Both sources lie within San Bernardino County and both are tributary to Baldwin Lake. The application also contemplates the diversion of 15 acre-feet per annum to be accumulated at a natural reservoir site on Van Dusen Canyon Creek in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of the above mentioned Section 11. At this site a stone, concrete and earth dam is to be provided, 6 feet high and 50 feet long. The resultant reservoir is to have a surface area of 2.5 acres and a capacity of 15 acre-feet. Water for mining purposes is to be conveyed by open ditch, and for domestic purposes by pipe line. The place of use is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2 and within the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 11, T 2 N, R 1 E, SBB&M.

Protest

A protest against the application was filed in the names of Baldwin Lake Mutual Water Company, W. R. Shay, C. A. Shay, W. C. Shay, Myrtle Hornstein, Beulah Barker, Charles Omar Barker, Jr., George Roth Barker, Carolyn Barker Johnson, and Big Bear City Mutual Service Company. It is alleged in this protest that the protestants own the right to take the entire flow of Van Dusen Canyon Creek and that for more than 20 years last past they have taken and beneficially used the entire flow of that creek primarily for domestic purposes and secondarily for irrigation. It is claimed that if the applicants divert as proposed pollutions will result, rendering the water unfit for the protestants' uses and that there will also be a serious reduction in the amount available for diversion. The protestants base their claim of a water right upon appropriation and use prior to December 19, 1914, continuing use thereafter, and also upon a court judgment and upon prescription. They further assert that first use was made in 1914, that the entire flow of the stream has been used year-round, and that since 1924 water has been used for domestic purposes when required and at other times for

meadow irrigation. The protestants' point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, T 2 N, R 1 E, SBB&M.

In answer to the protest the applicants deny the protestants' several allegations, allege in turn that they, the applicants, own the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, all but 15 acres of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T 2 N, R 1 E, SBB&M, through purchase and by mineral land entry and that they also own the adjoining Half Moon Mine, 160 acres in extent. They also allege that the protestants own no land or water rights within Van Dusen Canyon and own no land within one half mile of the mouth of Van Dusen Canyon, that the protestants have never complied with the state laws governing the appropriation of water in the area herein described, that the protestant Baldwin Lake Mutual Water Company in 1926 applied to the Federal Land Office for a dam site, reservoir and pipe line right of way within the area in question, that that application was rejected for the reason that the land was potential mineral land, that after rejection the application was referred to the United States Forest Service for further study, that in 1935 a special use permit was granted, subject however to cancellation upon a valid mineral land entry, and that that permit specifically excluded any water rights and was made subject to all valid claims. The applicants also allege that the dam and diversion installed by the protestants under the special use permit are now depriving the applicants of all water, that the applicants are now engaged in mining operations with which the protestants are interfering, and that the applicants have given the United States Forest Service notice to cancel the special use permit. The applicants assert that they do not propose a permanent diversion but merely a use of designated water for mining operations, which water will be returned to Van Dusen Canyon Creek and will not be polluted.

Hearing Held in Accordance with the Water Code

Application 12168 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 13, Section 733(a) of the California Administrative Code on Tuesday, February 1, 1949. in Room 320 of the County Court House, San Bernardino, California. Of this hearing the applicants and the protestants were duly notified.

General Discussion

As a supplement to the information developed at the hearing or otherwise on hand a field investigation was made by Associate Hydraulic Engineer J. J. Heacock on July 15, 1949. Present also at the investigation were the applicant, Protestant C. A. Shay and Mr. Hornbek. Mr. Heacock found that at the proposed point of stream diversion in Section 2 the stream appears as springs along a contact zone between limestone and granitic rock, that the total flow at the time of the investigation approximated 75 gallons per minute, that that flow is considered to be fairly stable, and that from the springs the stream flows directly to the protestants' point of diversion. He found further that the mill to which the applicant proposes to conduct 0.25 cubic foot per second lies below the protestants' upper diversion point, that the water used at the mill is to be returned to the stream above the proposed storage reservoir and that during dry periods it is expected to reuse the water by pumping from mill to reservoir as necessary. He remarks that water diverted from the stream (Van Dusen Canyon Creek) is to be used in a flotation process and will not be polluted by chemicals, and that water wanted from the unnamed spring is to be used for domestic purposes at a projected mining camp, to one cabin at which site water at present is being carried. Mr. Heacock's report also mentions other diversions by the protestants, including an intermittent surface diversion by ditch heading near the center of Section 11, a well near the southwest corner of Section 12, a source called Green Spot Springs and another called Fish Hatchery Spring, the last named sources

lying respectively within Section 30 and 20 of T 2 N, R 2 E. His report states that the waters from the protestants' several sources are distributed by the Big Bear City Mutual Service Company, and that surface diversion from Van Dusen Canyon Creek serve mainly the golf course and pasture irrigation.

It appears from the testimony (on page 44 et seq. of transcript) that all of this natural flow of Van Dusen Canyon Creek in the reach of that stream containing the proposed point of diversion is being diverted by and for a long period has been diverted for domestic purposes and irrigation by the protestants and that for the purposes to which those protestants are committed, i.e. service to a subdivision of home sites and the irrigation of a golf course and a tract of meadow, the supply yielded by Van Dusen Canyon Creek requires supplementation by pumping from other sources. It follows therefore that surplus unappropriated water is ordinarily non-existent at the point where the applicants seek to divert 10 miners inches from Van Dusen Canyon Creek (designated as Source 1 in the application) and that the application to that extent should be denied.

As to the applicants' proposal to divert .003 cubic foot per second from a certain unnamed spring (designated as Source 2 in the application) no bar to approval is seen, and the application to that extent should be approved. According to the information no direct use is being made of the spring and the latter's contribution if any to Van Dusen Creek within the limit applied for is insignificant.

The applicants' proposal to divert 15 acre-feet per annum from Van Dusen Canyon Creek for temporary storage and later utilization, warrants approval. In view of the characteristics of the tributary watershed it may be presumed that intermittent flows occur in excess of the capacity of the 8 inch intake of the protestants' upper diversion and that surpluses thus resulting may at times be accumulated in the applicants' proposed reservoir without conflict

with the protestants' alleged rights.

Summary and Conclusions

The application insofar as it relates to a diversion of 10 miners inches from Van Dusen Canyon Creek should be denied. The application insofar as it relates to diversion of .003 cubic foot per second from an unnamed spring and to a diversion of 15 acre-feet per annum from Dusen Creek should be approved.

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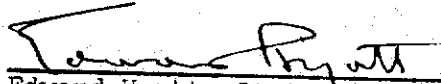
ORDER

Application 12168 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 12168, insofar as it relates to a diversion of 10 miners inches from Van Dusen Canyon Creek be denied.

IT IS HEREBY FURTHER ORDERED that Application 12168 insofar as it relates to a diversion of .003 cubic foot per second from an unnamed spring tributary to Baldwin Lake, and to a diversion of 15 acre-feet per annum from Van Dusen Canyon Creek be approved and that a permit relating to such diversions only 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 21st day of October 1949.


Edward Hyatt, State Engineer