

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 14116 by Walter E. Robertson to appropriate Water from North Canyon of Fitzgerald Ranch, Tributary to Big Tujunga Wash, in Los Angeles County, for Irrigation and Domestic Purposes.

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Decision A. 14116 D. 745

Decided May 27, 1952

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In Attendance at Investigation Conducted by the Division of Water Resources at the Site of the Proposed Appropriation on December 17, 1951:

Walter E. Robertson	Applicant
Harry W. Zachau	Protestant
J. J. Heacock	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer

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OPINION

General Description of the Project

The applicant seeks to appropriate 0.666 cubic foot per second, year-round, for domestic purposes and irrigation, from a source designated as "North Canyon of Fitzgerald Ranch". It is proposed to divert at a point within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 7, T2N R13W, SBB&M, diversion to be effected by means of 2 concrete boxes and a galvanized iron pipe line, the latter to

consist of 2590 lineal feet of 4 inch and 1200 lineal feet of 2 inch pipe. A domestic supply is wanted for 4 houses with a total of 2 acres of appurtenant garden. Fifty acres are to be irrigated of which 5 acres are to be in alfalfa, 20 acres in orchard, 15 acres in general crops and 10 acres in pasture. Irrigation is to extend year-round. According to the application the land to be irrigated has no other water right or source of water supply.

Protest

Harry W. Zachau protests the application, stating, in part:

"Zachau Canyon has a very limited drainage area and contains very little water except in flood periods. My source of supply is approximately one mile below point of proposed diversion and any such diversion will deprive me of supply of water to which I have had use for the past forty-one years."

Protestant Zachau claims a riparian right to the use of water from the source from which the applicant proposes to divert and states that his use of this water commenced in March, 1910. He describes his point of diversion as being located about 100 yards east of the NE corner of Lot 9, Section 12, T2N R13W, SBB&M. He states as to the extent of his present and past use of water:

"Except during periods of excessive rainfall I have used all of the underground water reaching my point of intake for domestic and irrigation purposes the year round, since March, 1910. The amount available has naturally been governed by the amount of rainfall and is usually - - - - very limited - - - -."

The following statements also appear in the Zachau protest:

"Since March of 1910 I have been living at my present location which I homesteaded - - - - - . This is Lot 9 of Sec. 12, T2N R13W, SBB&M, which is intersected by Zachau Canyon from which I have continuously used all the available water for domestic and irrigation purposes. Originally I had perhaps three acres under irrigation, but with dwindling water supply this has been reduced to about half an acre. Except for the last year or two I have always had a fair supply until late summer or early fall, but this year my supply failed completely two or three months ago and I am obliged to buy all the water I use.

"During the last year Mr. Robertson had some development work done near the head of the canyon and has diverted the water to land that has never previously been served, and I am sure this diversion has caused my supply to fail completely so early in the year.

"In view of the amount of work I have done to develop a supply of water for myself, and the length of time I have had continuous use of same, I feel it would be a very great injustice to me to permit any further withdrawal of water from this canyon, except that to which Mr. A. DeLiban (my neighbor above me) is entitled for his personal use.

"In view of these facts I would respectfully request that you deny the application of Mr. Robertson for the right to withdraw any water from the source in question."

Answer

The applicant denies that the protestant has ever diverted or used any of the water sought under the application. He alleges that for over 30 years all water issuing and flowing from the source designated has been diverted and used by Alfred De Liban and former owners of the Seven Hills Ranch, that to that end said De Liban and former owners dammed, piped and stored that water in its entirety and used it for domestic and irrigation purposes upon said Seven Hills Ranch and that during that entire period no water emanating from the source designated, except flood waters at times of extraordinary rainfall, escaped downstream, either on the surface or underground. The applicant denies that the protestant is, has been or will be damaged, prejudiced or otherwise affected in any manner or degree as a result of the appropriation sought. He asserts that during the 30 years mentioned De Liban and/or his predecessors were entitled to and owned the right to divert and use all of the waters issuing or flowing from springs or otherwise in the

North Canyon of the Fitzgerald Ranch. He denies generally and specifically every allegation in the protest.

#### Field Investigation

The applicant and the protestant having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, Title 23, Waters, a field investigation was conducted at the site of the proposed appropriation on December 17, 1951 by an engineer of the Division. Both applicant and protestant were present during the investigation.

#### Records Relied Upon

Application 14116 and all data and information on file therewith.

#### Discussion

According to the report of the field investigation of December 17, 1951, the source named in the application is the stream that is shown on the La Crescenta quadrangle, USGS, as Zachau Canyon, the watershed above the proposed point of diversion consists of about 150 acres of steep mountain side, the watershed above the protestant's point of diversion contains 70 additional acres of which some 45 acres are steep mountain side and 25 acres lie on the alluvial cone at the canyon mouth, rainfall averages 25 inches above the applicant's proposed intake and 20 inches above the protestant's, rainfall during the 7 seasons last past has averaged less than 80% of normal, and the flow of the source is intermittent and flashy, one or two perennial pools however existing below the applicant's proposed intake. The report also states that the applicant has done considerable development work at and above his proposed point of diversion and that the developed flow at the time of the investigation was 0.033 cubic foot per second.

As to the protestant's situation the report of investigation indicates that work on a water system was started in 1910, when the land was homesteaded, that the water system was expanded as supply diminished, that the protestant's works consist of a series of 4 interconnected rubble masonry cisterns in the stream channel, water being piped from the lowermost cistern to a small, covered concrete reservoir, that the pipeline leading to the reservoir can carry about 20 gallons per minute, that the cisterns were all dry at the time of the investigation, flow having ceased completely in early August, that complete failure of supply had never occurred in any previous year, that the protestant's present use is for the irrigation of about 2 acres of orchard, garden and lawns and for the domestic supply of 3 fully plumbed houses, that as many as 4 acres have been irrigated, that the protestant's property appears to be riparian and that the protestant's claimed rights are probably valid.

The protestant's series of cisterns appears to be roughly  $\frac{1}{2}$  mile down-canyon from the applicant's proposed point of diversion. The report of investigation mentions pools in the canyon below the applicant's proposed point of diversion and the map accompanying that report shows 1 such pool, located roughly  $\frac{1}{4}$  mile downstream from the applicant's proposed intake. In this connection the report of investigation states:

"It would require a considerable investigation to determine what part of the underflow of the canyon reaches the protestant's point of diversion, but the fact that water stands in pools in the channel - - - would indicate that some water leaves the canyon and probably reaches his point of diversion."

Application 7599 Permit 4181 License 1742, standing in the name of Alfred De Liban, provides for the diversion, year-round, of 0.025 and 0.017 cubic foot per second, respectively, from the North Canyon and from the East Canyon of Fitzgerald Ranch. The points of diversion are described as being

located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$  and the SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 7, T2N R31W, SBB&M.

Application 12400 Permit 7185, also standing in the name of Alfred De Liban authorizes additional diversions of 1.5 cubic feet per second and 0.5 cubic foot per second, respectively, from the same canyons, and at the same locations. Permittee De Liban's progress report for 1951 is to the effect that additional drilling and exploration for water remain to be done and that water has been used so far for the irrigation of about 20 acres and for domestic consumption by 10 people. He states in that report that he has used all water available and is still seeking more.

Diversion from the North Canyon of Fitzgerald Ranch under Applications 7599 and 12400 appears to be made at the same point at which it is sought to divert under Application 14116. It is evident that so long as supply is insufficient to satisfy Application 12400 no water is available for diversion under the relatively junior Application 14116.

From the information above set forth it is apparent that unappropriated water in the source under discussion is presently non-existent and that its development, in future, in the manner undertaken by the applicant, is problematical. It is the opinion of this office therefore that the approval of Application 14116 is unwarranted and that the application should be denied.

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ORDER

Application 14116 having been filed with the Division of Water Resources as above stated, a protest having been filed, a stipulated hearing

having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 14116 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 27th day of May 1952.

Original signed by A. D. Edmonston

A. D. Edmonston  
State Engineer

SCW:dm