

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 15081 by David Black et al. to Appropriate Water from Los Alamitos Creek Tributary to Guadalupe Creek in Santa Clara County for Domestic, Municipal and Industrial Purposes.

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Decision A 15081 D. 812

Decided December 3, 1954

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Appearances at Hearing Held at San Jose on June 30 and July 1, 1953

For the Applicants

David Black et al.

L. D. Bohnett, of Bohnett, Hill,  
Cattrell & Bohnett, Attorneys at Law

For the Protestants

J. Caggiano et al.

Charles E. Luckhardt of Rankin,  
Oneal, Luckhardt, Center & Hall,  
Attorneys at Law

EXAMINER - L. C. JOPSON, Principal Hydraulic Engineer, Division of Water Resources, Department of Public Works for A. D. Edmonston, State Engineer.

Assistant to Examiner - E. C. Greiner, Assistant Hydraulic Engineer, Division of Water Resources.

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OPINION

General Description of the Project

The applicants—David Black et al., doing business under the name of Black's Almaden Water System—seek to appropriate 3 cubic feet per second, year-round, from Los Alamitos Creek, in Santa Clara County, for domestic, municipal and industrial purposes, the water to be diverted at a point within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of projected Section 10, T 9 S, R 1 E, MDB&M and utilized within the village of Almaden and designated territory lying easterly and northerly therefrom. The applicants assert that they are a public utility, that they will use part of the water applied for to serve additional residents in Almaden and will also sell water to San Jose Water Works, also a public utility, for distribution in the area to the east and north. They state that the village of Almaden has a present population of 500 and estimate that average daily consumption for municipal purposes will reach 1 cubic foot per second by the end of the first, 2 cubic feet per second by the end of the second and 3 cubic feet per second by the end of the third 5-year period. As to industrial use they propose to supply such industries as may be established within the area that they serve. Diversion, they state, is to be by gravity, the diverting dam being 2 to 3 feet in height, to be built of local material or concrete, to be equipped with flashboards, to be used only during periods of low flow. The conduit contemplated is a 12-inch pipeline of riveted steel or its equivalent, length 63,000 feet, total fall 362 feet. They state that the site of

the proposed diversion is owned by the Santa Clara Valley Water Conservation District and that that District has granted them (the applicants) an easement.

#### Protest

One J. Caggiano and some 120 others protest the application jointly. The protest contains, among others, the following passages:

"Each of the undersigned protestants are owners of property lying downstream from the proposed point of diversion of applicant set forth hereinabove, and are users of the waters of said creek either for purposes of irrigation, for the watering of animals and livestock, for the purpose of raising crops, and for domestic and household use of the waters thereof. That each and all of the undersigned allege and affirm that there are not sufficient waters now running in said Los Alamitos Creek to provide waters for the reasonable requirements of the protestants under present conditions of diversion, and that to further divert any of the waters of said Los Alamitos Creek at the point of the proposed diversion of application or at any other point along said stream above the respective holdings of protestants will seriously injure said protestants, their properties and their homes. That as a result of the foregoing, protestants allege there are no unappropriated waters of the Los Alamitos Creek, and that all of said waters below the point of the proposed diversion of applicants are used beneficially as the result of vested rights in riparian owners and/or appropriators for beneficial purposes ...."

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"All of the points of diversion and all lands of protestants lie below the points of diversion of applicant and generally within a distance of 8 miles as estimated by protestants below the proposed point of diversion. Protestants intend and ask leave to supplement protest filed herein ...."

The protest is accompanied by numerous affidavits, in one or another of which the protestants aver in effect as follows:

that the estate of George M. Hubbell, dec. includes property riparian to Los Alamitos Creek, that water taken directly from the creek by wells on each side thereof irrigates 50 acres of orchard, permanent pasture and truck,

that Leo J. Pfeiffer pumps 300 gallons per minute, when available, from Los Alamitos Creek for domestic purposes and for the irrigation of 24 acres of riparian orchard land,

that B. W. and Ethel M. Scott divert 300 gallons per minute when available from a well and pit 100 yards from Los Alamitos Creek for the irrigation of some 37 acres, such use dating from 1903,

that Clarence and Lyle Burmahln irrigate 100.79 acres of riparian land from surface and subsurface flow of Los Alamitos Creek, that such use has been constant for more than 50 years,

that Francisco Contreras irrigates 5 acres of orchard from the well of G. A. Mancuso, located one-quarter mile from Los Alamitos Creek, said well being shallow and dependent upon the flow of Los Alamitos Creek, that said well supplies up to 600 gallons per minute, that said irrigation has extended for approximately 40 years,

that William F. Gifford irrigates orchard and domestic crops by means of water purchased from the well of Joseph P. Mondo, said well being located 1000 feet from Los Alamitos Creek and pumping up to 450 gallons per minute, that said well is entirely dependent upon waters flowing in Los Alamitos Creek,

that George Frank purchases water from the well of Joseph P. Mondo and uses said water for the irrigation of approximately 16½ acres of orchard and general crops,

that Abe H. and Olga Bese irrigate 8 acres of orchard by means of water obtained from the well of G. A. Mancuso, located one-quarter mile from Los Alamitos Creek, said well being fed by the surface flow in Los Alamitos Creek, that the well yields up to 600 gallons per minute, that irrigation has been practiced for approximately 40 years,

that Jesus Contreras irrigates 6½ acres of orchard with water from G. A. Mancuso's well, that irrigation of said land has continued approximately 40 years,

that Louis M. Savio diverts water directly from Los Alamitos Creek and thereby irrigates 30 acres of orchard, that said land is riparian, that he and his predecessors have irrigated said land since approximately 1910,

that George Kiyoski Kiyomura, Wasako Kiyomura and Hughes Minoru Kiyomura irrigate 15-3/4 acres of berries and garden produce with water from a shallow well one-half mile distant from Los Alamitos Creek, that when a flow of water exists in Los Alamitos Creek said well yields 250 gallons per minute, that when no surface flow exists it is impossible to secure sufficient water from the well for irrigation,

that Joe and Angeline C. Thomasello irrigate 60 acres of orchard and field crops by direct diversion from Los Alamitos Creek, that they and their predecessors have so irrigated for more than 50 years last past,

that William R. and Zelma J. Cash obtain water for irrigation from a shallow well located 250 feet from Los Alamitos Creek, that the well produces approximately 300 gallons per minute but depends entirely upon the surface flow of the creek, that the water is used for irrigation of 5 acres of alfalfa, that said irrigation has been practiced since 1908,

that Minnie Nancy Beecroft irrigates 15-3/4 acres of vegetables and truck by means of a well 250 feet from Los Alamitos Creek, that said irrigation has been continuous for about 50 years.

that David T. and Gertrude C. Mathers irrigate about one-half acre of lawn, garden and vegetables, securing their supply from a well located on the bank of Los Alamitos Creek, that their land is riparian,

that John and Gertrude Stallings irrigate 4 1/2 acres of orchard and garden, that they also use water for domestic purposes, that their land is riparian to Los Alamitos Creek and that their water is supplied therefrom,

that Norbert and Martha Pfeiffer irrigate approximately 25 acres of orchard and permanent pasture, that they also use water for domestic purposes, that their lands are riparian to Los Alamitos Creek, that when water is available they pump up to 300 gallons per minute, that their lands have been irrigated since about 1912,

that Peter J., Joseph S., Samuel and Anthony Cefalo irrigate approximately 69 acres of orchard and vineyard, that their land is riparian to Los Alamitos Creek, that when water is available in that stream they pump up to 1100 gallons per minute from it, that they and their predecessors have irrigated in that manner since 1910,

that Graystone Heights Cooperative, Inc., pumps an average of 68,000 gallons per day from a well on the course of Los Alamitos Creek, that said well serves 12 families,

that Clemente Mondo irrigates 24.94 acres of orchard and vineyard, that said land is riparian to Los Alamitos Creek, that water is secured by diversion from that stream at a rate of up to 400 gallons per minute, that said irrigation has been going on since about 1909,

that Emil T. and Pearl L. Bortis divert by means of a shallow well and trench leading from the bed of Los Alamitos Creek, that the pump is located about 40 feet from the creek bank, that they use water for the operation of a trout farm, for irrigation and for domestic purposes, that their land is 1.669 acres in extent,

that John Kocher diverts water from Los Alamitos Creek by means of a well offset approximately 40 feet therefrom, that he utilizes the water diverted in irrigating 8 acres of riparian land planted to permanent pasture, that when water is available in the stream his well yields 125 gallons per minute,

that G. A. Rohrbacher diverts from a well approximately 30 feet from the center of Los Alamitos Creek, that his use is for domestic purposes and for the irrigation of 10 acres of orchard and berries, that his lands are riparian, that his intake is a 2½-inch pipe,

that Frank and Ivy Lastufka own approximately 10 acres of riparian land planted to orchard, that they divert directly from Los Alamitos Creek through a 2½-inch pipe,

that Richard J. Pfeiffer owns approximately 10 acres of riparian orchard land which he irrigates by pumping directly from Los Alamitos Creek at a rate of 150 gallons per minute, that said land has been irrigated in this fashion for over 40 years,

that Frank B. Pfeiffer owns approximately 7 acres of riparian land planted to berries and trees which he irrigates by pumping from Los Alamitos Creek at the rate of 150 gallons per minute, that he also supplies himself and an adjoining owner, David Widman, with water for domestic purposes,

that Sunta Borgi owns approximately 17 acres of land riparian to Los Alamitos Creek and irrigates said land which is in alfalfa, vineyard and orchard by pumping from a well pit adjacent to the stream at a rate of 250 gallons per minute, such irrigation having been practiced for more than 45 years,

that George Cahen owns approximately 20 acres of riparian land, upon which he diverts water by pumping from Los Alamitos Creek for domestic use at three houses, for stockwatering and for irrigation,

that Irene J. Baker Matteis, et al. own approximately 150 acres of land riparian to Los Alamitos Creek, that of that acreage they irrigate approximately 128 acres in permanent pasture and orchard, that they divert from sumps and wells located adjacent to the creek and distribute through underground pipelines and aluminum sprinkling systems,

that Michael M. and Juanita S. Savala and their predecessors have irrigated approximately 15 acres of orchard land by pumping from Los Alamitos Creek at a rate of up to 300 gallons per minute, that such irrigation has been going on since approximately 1910,

that Clyde D. and Beatrice E. Snyder divert directly from Los Alamitos Creek for the irrigation of 20 acres of orchard land and for domestic purposes, that said land is riparian, that when water is available during the irrigating season they pump at a rate of approximately 200 gallons per minute,

that Charles J. and Helan Finley pump from a well located approximately 500 feet from Los Alamitos Creek, said well being supplied by a channel direct from the creek, that the water is used for irrigation of a 16-acre orchard, that said irrigation has been in progress for over 40 years,

that Joseph P. and Ida Mondo divert by means of a well located approximately 1000 feet from Los Alamitos Creek for the irrigation of 10.77 acres owned by them, 21.34 acres owned by B. W. Scott, 25 acres owned by William Gifford and 16 acres owned by George Frank, that the lands are all in orchard and domestic crops, that the rate of pumping approximates 400 to 450 gallons per minute, that irrigation has been going on since 1913,

that Cecil L. and Glenva Goodrich divert directly from Los Alamitos Creek for domestic purposes for irrigation on a 1-acre riparian property,

that Gaetano Mancuso diverts from a well approximately 300 feet from Los Alamitos Creek for the irrigation of 20 acres of orchard and tomatoes and for domestic purposes, that he also supplies water to two of his neighbors--Bese and Contreras--for irrigation of 11-3/4 and 7 acres respectively, that the rate of pumping approximates 650 gallons per minute, that said irrigation has been in progress since about 1900,

that C. Grilli pumps water through a 2-inch pipe heading on Los Alamitos Creek for irrigating flowers for commercial sale and for domestic use, that he also serves the house on his property by pumping from a well offset 15 feet from the creek bank, that his property is riparian, that irrigation has been in progress thereon since about 1909,

that Frank and Gertrude Carrillo own property located within Block A of Almaden Manor, that their property is riparian to Los Alamitos Creek, that the vegetation including trees and shrubbery growing upon their property is supported by that stream,

that J. and P. Caggiano and Joe Cirigliano own approximately 65 acres of land riparian to Los Alamitos Creek, that they irrigate said land which is a prune orchard by diversion from a well pit adjacent to Los Alamitos Creek at the rate of 1250 gallons per minute, said irrigation having been in progress for over 40 years,

that Joseph Sclafani diverts water from a shallow well pit on the bank of Los Alamitos Creek for the purpose of irrigating approximately 20 acres at a rate of approximately 600 gallons per minute, that such irrigation has been in progress since about 1910,

that Thelma Meyer diverts directly from Los Alamitos Creek for the irrigation of 5 acres of orchard and permanent pasture and for the support of a fish pond, that her lands are riparian and have been irrigated since about 1909,

that Winifred Baker et al., a co-partnership, owns approximately 109 acres of riparian land, 90 acres of which are under irrigation, that said irrigation has been in progress since 1907, that the land is planted to alfalfa and orchard,



that Kenneth V. Laird owns property within Block A of Almaden Manor, that said property is riparian, that Los Alamitos Creek supports the vegetation, trees and shrubbery growing thereon.

that Rosario and Rose Anzalone pump water from Los Alamitos Creek at a rate of 800 gallons per minute for domestic purposes and for the irrigation of a 23-acre orchard, that their property is riparian and has been irrigated since about 1900,

that Otto, Frank and Catherine Michalek irrigate approximately 100 acres of riparian land planted to trees by pumping directly from Los Alamitos Creek at a rate of about 1200 gallons per minute, that such irrigation has been going on for more than 50 years,

that Ben and Jim Mazzone own approximately 65 acres of land riparian to Los Alamitos Creek, that they irrigate said land which is in prunes and permanent pasture by pumping from a well pit adjacent to that stream at the rate of approximately 1050 gallons per minute, that said land has been so irrigated for over 50 years.

#### Answer

In answer to the protest the applicants state, in part:

"As to certain of the protestants said protest fails 'to state a valid ground of protest' and 'is based upon issues which do not come within the jurisdiction of the Department to determine.' Therefore the protest of such protestants should be dismissed pursuant to Section No. 722 of the Rules, Regulations and Information ....

"Certain of the Defendants ... make no allegation or showing of any use to which they put any water from the Alamitos Creek. Said protestants allege that their respective lands are riparian to said stream. Applicants admit that some though not all of said lands are riparian. There is no allegation in the protest that said protestants, or any of them, make use of the water flowing in said creek for any beneficial purpose. Applicants deny that any of said protestants divert and/or use any water from said stream for beneficial purposes.

"Another group ... set forth in their protest that they respectively take water from wells distant two hundred fifty (250) feet, or more, from said stream. Applicants admit that water in the underground gravels at such distances from the stream is percolating water and does not come within the jurisdiction of the Department. No connection is shown between the stream flow and the waters pumped from the wells of said protestants.

"The protests of the other protestants are too vague for specific answer ....

"Applicants are informed and believe and therefore allege that none of protestants divert water directly from said stream but that all of them obtain water ... by pumping the same from pits or wells at varying distances from the banks of said stream and that the water so pumped is percolating water and not a part of said stream.

"If any of said protestants actually divert water for irrigation, or other useful purposes, such diversion can be made during only a very limited period each year and the proposed use of additional water from said stream by applicants would interfere with such direct diversion, if any, for only a few days in any season, if at all. During periods when there is a considerable flow of water in the stream the proposed use of additional water by applicants would not interfere with the use of water by any such protestant. In periods of low flow water in said stream does not reach the lands of said protestants.

"For the foregoing reasons applicants deny that their proposed use of additional water from the Alamitos Creek will interfere with any rights of any of said protestants to any part of said waters and deny that any of protestants will be damaged by applicants' proposed use of such additional water."

Hearing Held in Accordance with the Water Code

Application 15081 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 the California Administrative Code, Title 23, Waters, on Tuesday, June 30,

1953 at 10:00 o'clock a.m. in Room A of Civic Auditorium, San Jose, California. Of the hearing the applicants and the protestants were duly notified. The hearing opened at the time and place designated, recessed from 4:40 o'clock p.m. of that day until 9:30 o'clock a.m. of the next, adjourned at 11:45 o'clock a.m., July 1, 1953.

#### Hearing Testimony

Relevant testimony by witnesses at the hearing of June 30 and July 1, 1953 was in substance as follows:

David Black, applicant, testified (pages 6 to 40 of transcript) to the effect that he and the other applicants own the Almaden Water System, that said system operates as a public utility, that Bernard Black was his brother but has passed away, that he and the other applicants have supplied water to inhabitants of Almaden since March, 1927, that water was served free until 1949, that it is now necessary to provide additional water for San Jose Water Works, that there is water at his present point of diversion at all times of the year, that such water is not being used, that he now diverts water by means of perforated culvert pipes buried in the bed of the stream, assisted at time of low water by low, temporary dams, that if Application 15081 is approved he intends to put in larger pipes, provide reservoirs and furnish better service and sell more water so as to increase income which is currently insufficient to meet expenses, that the water that goes down Los Alamos Creek is not used beneficially by anyone

else, that he has been in the area since 1927, that at this time of year (June 30) there usually is no water in Los Alamitos Creek as far down as McKean or Uvas Road, or until the rainy season, that so far as he knows there are no diversions for beneficial use from Los Alamitos Creek from McKean Road Bridge to his diversion except those that he supplies, that he has not investigated and does not know of the use, if any, that has been made of waters of Los Alamitos Creek below the McKean or Uvas Road bridge, that there have been many complaints about deliveries to residents of Almaden, that he has water enough and that excesses waste but that he lacks equipment and wherewithal, that he is "getting by" but is "in trouble all the time", that the point where he delivers water to San Jose Water Company is at Bertram Avenue and Almaden Road, that he formerly served users below Bertram Avenue, right into Robertsville, that a County pipeline varying from 2 to 6 inches in diameter extended from Almaden to Robertsville, that that pipeline was built for road work purposes and is now owned by San Jose Water Works, that the latter took it over in about 1949 and has been serving that territory ever since, partly by waters bought from him (Black), that the area served by the pipeline is growing faster than Almaden, that the area has other utilities and with water it should develop rapidly, that the capacity of his (Black's) system now is 331,000 gallons per day.

W. M. Whitcomb, Assistant Engineer, San Jose Water Works, testified (pages 41 to 47 of transcript) to the effect that he has measured the flow of

Los Alamitos Creek about 150 feet below the present intake of the Black System, that measurements were made by means of a weir, between June 10 and June 30, 1953, that seven measurements in all were made, that rates of flow (in gallons per day) and dates of measurements were 2,470,000 on June 10, 2,580,000 on June 12, 2,250,000 on June 16, 2,940,000 on June 19, 1,815,000 on June 23, 1,815,000 on June 26, 1,913,000 on June 30, that the measurements were all made at about 9 a.m., that the measurements were made at Mr. Black's request.

George Meyer, testified (pages 49 to 66 of transcript) to the effect that Los Alamitos Creek runs through the Thelma Meyer property, that a 6-inch pipeline supplies a trout farm thereon and also supplies a trout farm on the Bartis property, that the Meyer property is not irrigated currently but was irrigated for many years and will be again, that water was diverted for irrigation by pumping, that Meyer dug a well pit 17 or 18 feet deep, 40 feet from the creek, and pumped from the pit, that the pit was supplied by and dependent upon the creek, that when there was no water in the creek there was none in the pit, that he and his father own another riparian property nearby, 26 acres in extent, that that land is irrigated by pumping from the creek, that permanent pasture and garden are irrigated, livestock watered, domestic needs served, that there is no excess of water in Los Alamitos Creek except in flood season.

W. M. Whitcomb, recalled, testified (pages 67 to 73 of transcript) to the effect that San Jose Water Works records show takings by that company from

Black's Water System in 1949 to have been 5,370,000 gallons, in 1950, 5,293,000 gallons, in 1951, 6,272,000, in 1952, 8,792,000, in 1953, 3,455,000, that the water taken is distributed along Almaden Road as far north as Elwood where the company has a pumping station that pumps south, that it is a daily occurrence for requests for service between the village and Elwood Avenue to be made upon the company which cannot be given because of lack of water, that in his opinion the locality is a desirable one for development.

Cheleste Grilli, testified (pages 74 to 82 of transcript) to the effect that he owns property on Almaden Road, that he pumps directly from the creek, that his place is one-quarter mile north of Bertram Avenue, that on one occasion he stopped his pump for lack of water, that the land is riparian, that he pumps from March to December or all year when rain is deficient, that at present there is water going by his place, that there is usually surplus water in June, that supply sometimes fails in summer, that since 1944 supply was deficient in one summer, that he raises flowers for a living.

Emil T. Bortis, testified (pages 82 to 90 of transcript), to the effect that he owns 1.69 acres on Almaden Road, riparian to Los Alamitos Creek, that he operates a commercial trout farm, that he pumps from wells that depend on the creek, that he waters shrubbery and lawn, that most of the water pumped into his land drains back to the creek, that there have been water shortages, that they have caused heavy losses, that he has equipment enough and if he had more water he could raise more fish, that if the water

were shut off for 24 hours he would be "out of business", that the creek is usually dry in summer at McKean Road, that he bought his place in March 1952, that the lowest water occurs from June through September, that this year is worse than last, that the water he diverts from the creek is surface water.

Clemente Mondo, testified (pages 90 to 98 of transcript) to the effect that he owns and lives on a 24.94 acre property on Almaden Road, that Los Alamos Creek traverses that property, that his land is planted to apricots, prunes and vines, that he diverts directly from the creek, that he was born there 53 years ago, that his property has been irrigated as long as he can remember, that he obtains domestic water from a well 12 feet deep and 30 feet from the creek, that he has known the well to go dry when the creek goes dry, that he irrigates usually through June, that supply is deficient in summer, that there is some water going by his place now, that until now there usually is plenty of water, that at the Black System intake "I have seen the creek dry twice ... and I seen a lot of years when there was very, very little water come through the Almaden", that below his place the creek goes entirely dry during the summer months of every year.

David T. Mathers, testified (pages 98 to 102 of transcript) to the effect that he owns and lives on a one-half acre property, that his property crosses the creek, that he irrigates by diversion from the creek, that he has lived there 5 years, that in summer the creek usually goes dry on the Louis Savio place which is a quarter mile below his own place.

Joseph P. Mondo, testified (pages 102 to 109 of transcript) to the effect that he is familiar with the Savio property, that Los Alamitos Creek runs through that property, that alfalfa and orchard are irrigated thereon, that irrigation was in progress in 1900 and has been ever since, that water used to be diverted by ditch but is now pumped, that pumping has been from a well connected by channel to the creek and also by pumping directly from the creek, that he (the witness) lives on a 12-acre property on the Almaden Road perhaps a half mile from the creek, that he has a well about 1,000 feet south of Redmond Road, that his land does not touch Los Alamitos Creek, that "she is fed from underneath", that "if Los Alamitos Creek is running I have got the best well in Santa Clara County but if the creek is not running I cannot drink the water if I am not so very thirsty."

Rosario Anzalone, testified (pages 110 to 113 of transcript) to the effect that he lives "four places past the Uvas Road", that Almaden Creek runs through his place, that he has 23 acres planted to prunes, apricots and grapes, that he irrigates from the creek, that he has irrigated every year since 1918, "that the creek goes dry most every year", some time in July.

Joseph Sclafney, testified (pages 113 to 121 of transcript) to the effect that he has lived on a 20-acre property since 1910, that he irrigates 15 acres of prunes, that the creek goes dry every year, usually in late June, and remains dry until rains begin in the fall, that it is the fifth place south of Uvas Road, that his property



doesn't quite touch Los Alamos Creek, being separated by a 40-foot strip, that his land has been irrigated for 40 years, that when the creek is dry there is "plenty of water but not enough to brag about" at Twin Creeks.

Charles J. Finley, testified (pages 122 to 125 of transcript) to the effect that he owns property in the Almaden Area just south of McKean Road, that 10 acres of it, planted to prunes, is irrigated by means of a pit 30 feet deep, 300 feet distant from Los Alamos Creek, that the pit is supplied by an underground channel from the creek, that when the creek is dry supply fails in the pit, that the creek is usually dry from sometime in June until the occurrence of Fall rains, that his land does not quite touch the creek but is separated by a strip owned by one Rohrbacher, that he (the witness) has owned the property for 7 years, that for 5 years preceding his ownership the property was not irrigated, that he has not applied for a water permit because the water that enters his well travels underground.

Gordon A. Rohrbacher, testified (pages 126 to 131 of transcript) to the effect that he lives on his property, traversed by Almaden Creek and adjacent to Uvas Road, that he bought the property in 1937, that he irrigates a small orchard and garden by means of a well 30 feet deep and 30 feet from the creek, that the well is supplied by the creek, that when the creek fails the yield of the well is very small, that the flow of the creek diminishes sometimes in June, usually in July, that

there is a reservation allowing a pipeline to be placed from the Sclafney property to the creek, that he cannot irrigate much later than June, that he has seen the creek very low at the Black intake but never dry.

Clarence Burmahln, testified (pages 132 to 141 of transcript) to the effect that he has lived in the Almaden area over 25 years, that he once owned a tract immediately north of McKean Road, that he acquired a large tract from which he has sold two parcels to Cefalu Brothers and Palermo, that his remaining property stretches along Los Alamitos Creek for about a mile, that he maintains a pumping plant on his property, that Calero Creek comes in below his property, that he irrigates about 180 acres, that his land is in apricots, prunes, vineyard, walnuts and vegetables, that he obtains water from Los Alamitos and Calero Creeks, that he has a pit about 26 feet deep with tunnels under Los Alamitos Creek, that at present (June 30) there is a fair flow passing his house, that about a half mile further downstream there is no flow, that that situation often occurs earlier in the season, that he has a 600 gallon per minute pump and a 1,000 gallon per minute pump, that he cannot run both pumps at the same time or the big one steady by itself, that when he pumps the users downstream get little water, that he knows conditions up and down the creek quite well, that in his opinion there is a shortage of water now and at all times, that he is supplied mainly from Los Alamitos Creek.

G. W. Hunt, testified (pages 146 to 168 of transcript) to the effect that he occupies the position of engineer for the Santa Clara Valley Water Conservation District, that he has served in that capacity for about 18 years, that he is familiar with the flow of streams and the ground water situation of the locality, that he was in charge under Engineer Fred Tibbetts of the construction of Almaden and Calero Reservoirs, that Calero Reservoir is filled largely by transfer of water from Almaden Creek, that the capacity of Calero Reservoir is 9,500 acre-feet, that of the Almaden Reservoir 2,000 acre-feet, that in accordance with the terms of a permit which the District holds flood waters are taken that would otherwise waste into the bay, such water being stored for a time and released as rapidly as possible without wastage into the bay, the purpose of the release being replenishment of the ground water, that Los Alamitos and Almaden are sometimes used to designate the same stream, although Almaden is used more commonly, that of the two reservoirs Almaden is usually emptied first, that at the gaging station opposite Redmond Road flow stopped in 1936 on June 15, in 1937 on September 27, in 1938 on September 30, in 1939 on May 6, in 1940 on September 30, in 1941 on September 30, in 1942 on September 30, in 1943 on September 30, in 1944 on September 6, in 1945 on September 23, in 1946 on August 26, that Los Alamitos Creek at McKean Road is usually dry in summer, that the wells between the junction of Calero and Los Alamitos Creeks and the village of Almaden are very definitely dependent on the flow of the stream, that he is most familiar with the group of wells "lying where you go

in that Road into Graystone Quarry", that in his opinion there are no unappropriated waters in Los Alamitos Creek, except during flood periods-- the periods of heavy rainfall in winter when water is going down the creek and wasting into the bay--that he holds that opinion because at times there is no water downstream, that he has never inquired into the rights of downstream diverters to take water, that the stream is usually dry, at McKean Road through the summer, that there is very little flow at Hourst Dairy, that he has never seen a time when there was no flow in the creek at the Black intake, that there are 4 or 5 wells at Graystone Quarry, some quite close to the stream, all fed by the stream, that the bedrock is high at Graystone Quarry, slopes toward the south and from the hills to the creek, that the Cooney Ranch is just south of the confluence of the Guadalupe and the Almaden.

Philip S. Schneider testified (pages 168 to 172 of transcript) to the effect that he was raised on a ranch that is located about one-quarter mile north and west of the north boundary of the Burmahln property, that his recollection goes back to 1908, that he began working on that ranch in 1914 and has watched it ever since, that about 100 acres of prunes were irrigated by water taken from a pit virtually in the creek bed, that the supply from the pit depends on the flow in the creek, that the creek usually dries up in June, that irrigation usually starts in May, that water was pumped at the rate of 1000 g.p.m., that there was one irrigation per year, that it took about a month to irrigate once.

Richard W. Matteis, testified (pages 172 to 176 of transcript) to the effect that he owns about 140 acres, that it is located about one-half mile north of the property testified to by witness Schneider, that about 50 acres of orchard and 78 acres of permanent pasture are irrigated, that irrigation of permanent pasture starts about April 1 and extends to about November 15, that he has a pit in the creek, 26 feet deep, a well 400 feet from the creek and 90 feet deep and another well 800 feet from the creek and 130 feet deep, that supply from the pit is entirely dependent upon the flow of the stream, that the other wells "will drop approximately one-half when the surface of the stream dries up", that he has no other means of irrigating, that when people pump at points upstream the effect at his property is immediate, that he also has a domestic well 30 feet deep, 2500 feet from the creek, that that well goes down in summer, but can then be pumped intermittently.

John P. Beiler, testified (pages 177 to 181 of transcript) to the effect that he owns about 100 acres on Almaden Road between Redmond and Elwood or Graystone, that that property lies south of the Matteis property, that Almaden Creek runs through his property, that he irrigates from a well in the creek bank, that the well is 96 feet deep, that "whenever the creek goes dry the water goes down and has gone down to the point where we can't get enough water to run through a 1-inch tap in one particular year", that when water flows in the creek he can pump 600 gallons per minute or more, that the well generally yields an "irrigation head" as late as August, that he irrigates prunes and alfalfa, that he irrigates prunes 3 or 4

times, that he irrigates in spring and, when there is water, in the fall, that ordinarily there is enough water but not always, that he irrigates in all about 98 acres, of which about 40 acres have only been irrigated recently.

Mrs. Anthony Kambish, testified (pages 182 to 186 of transcript) to the effect that she lives on Lot 60, Block A of Almaden Manor and Lot 160 of Block C, that her property goes to the center of the stream, that she has used water from the stream for her yard and garden but has not done so for 10 years, that she is connected with the Black Water System, that supply is sometimes low and sometimes fails, "that there have been lots of times when there wouldn't be repair work when we haven't had water."

Duane Mondo, testified (pages 187 to 190 of transcript) to the effect that his property is a portion of Lot 26 of Almaden Manor, that he is served by the Black Water System, that in winter there is a lot of pressure, that in summer pressure is deficient.

#### Objections to Hearing Testimony

Attorney Bohnett objected to questioning of Witness Black (pages 16 to 20 of transcript) as to the applicants' authorization by the Public Utilities Commission to serve all lands which they propose to serve; to the questioning of Witness Hunt (pages 157 to 159 of transcript) as to his opinion regarding the existence or non-existence of unappropriated water at the applicants' proposed point of diversion; and to the questioning of Witness Mondo (page 187 of transcript) as to

the insufficiency of supply furnished him by the applicants' water system. Attorney Bohnett was informed by the Examiner that his objections would be noted and passed upon in due course by the legal staff of the Division.

#### Hearing Exhibits

Applicants' Exhibit No. 1: Document entitled "Decision No. 42921 before the Public Utilities Commission of the State of California in the Matter of Applicants DAVID BLACK and BERNARD BLACK for Certificate of Public Convenience and Necessity/<sup>and</sup>to Establish Rates for Service Rendered."

Applicants' Exhibit No. 2: Print entitled "Black's Almaden Water System"— Showing Pipelines and Area Served.

Protestants' Exhibit A: Photostats of pages 14 and 16 of Book 32, Maps of the County Assessor of Santa Clara County.

Protestants' Exhibit B: Two deeds and map of Sclafney property.

#### Incidents Subsequent to Hearing

A memorandum submitted by the applicants' attorney on August 6, 1953, sets forth that water flows at the proposed point of diversion at all times and that all witnesses questioned in that regard so testify, that from the beginning of fall rains until the May or June following flow extends to and below lands of lowest protestant, that domestic needs exist in winter as well as in summer, that it follows that applicant

is entitled to a permit under Section 1253 of the Water Code. The memorandum cites *Tulare Water Company v. State Water Commission* 187 Cal. 533 and states in that connection:

"Since said decision ... it has been the policy, we are informed and believe, to grant applications ... whenever there is a showing that there is unappropriated water at the proposed point of diversion."

The memorandum sets forth also an objection to the testimony by Witness Hunt at the hearing as to his opinion relative to the existence or non-existence of unappropriated water and states in that connection:

"The Division would have no function to perform if its final order is to be determined or materially influenced by the opinion of witnesses for applicant or for protestant. The decision ... should ... be based upon facts and not upon the opinion of partisan witnesses."

It argues also that Witness Hunt's opinion is inconsistent with certain facts to which he has testified.

Measurements of flow of Los Alamitos Creek at two certain weirs were reported by applicants' attorney on August 10, 1953. The uppermost of these weirs is described as being located just below the applicants' present point of diversion; the lowermost, opposite the pumping station of the San Jose Water Works, approximately 100 yards downstream from Bertram Avenue. The measurements reported, in gallons per day, are as follows:



Date	Flow at Upper Weir (gpd)	Flow at Lower Weir (gpd)
July 3	1,412,000	--
July 7	1,412,000	--
July 10	1,222,000	1,222,000
July 14	1,222,000	1,222,000
July 17	1,140,000	1,058,000
July 21	876,000	680,000
July 24	1,058,000	724,000
July 28	800,000	724,000
July 30	800,000	724,000

A reply memorandum submitted by the protestants' attorney on August 17, 1953, cites Department of Public Works of the State of California v. Superior Court of the County of Siskiyou 197 Cal. 215 and remarks:

"It is quite obvious that if the Commission were deprived of the authority of determining whether or not unappropriated water exists in a water course there would be no purpose in delegating the authority to the Division of Water Resources of passing upon an application for appropriative rights filed with it."

As to Witness Hunt's testimony the protestants take the position that said testimony is admissible when considered in its entirety, Witness Hunt having qualified as an expert witness and having testified among other things that his conclusion that there is no unappropriated water is based upon his observation during many trips up and down the creek that all of the waters are being put to beneficial use.

An affidavit by L. D. Bohnett, submitted on August 21, 1953 is to the effect that in the late afternoon of August 15, 1953 the flow of Los Alamitos Creek 500 feet upstream from McKean Bridge was at least 50 g.p.m., that below that point the stream widened into a pool with its lower end a few feet above the bridge and that only a trickle of water flowed under the bridge and disappeared a short distance beyond.

A closing memorandum by applicants' attorney, on August 21, 1953, contains, among others, the following statements:

"Applicant has at no time questioned the authority of the Division to determine whether there is unappropriated water flowing at the proposed point of diversion, but has contended ... that there is water flowing ... at the proposed point of diversion at all times and that said water, in part at least, is unappropriated."

"Applicant submits that the opinion expressed by said witness (Hunt) should be entitled to no weight whatsoever in the determination of the issue before the Division."

"Counsel cites the case of the Department of Public Works vs. Superior Court 197 Cal., Page 215 .... That case, however, does not deal with the appropriation of water ...."

"It is conceded by all parties that there is water flowing at the proposed point of diversion at all times. It is further conceded by all parties that from the time rains begin in the fall of the year until May or June of the following year the water flowing past the point of proposed diversion is unappropriated, except for that used for domestic use by a few of the protestants. The water so used, it is obvious, consumes a very small portion of the total flow. In May and June of each year the orchardists along the stream irrigate their orchards and during a part of those two months it may be that all the water reaching the orchards lying below the McKean, or Uvas, Road Bridge is used by the appropriators, but the flow of water gradually recedes upstream and by the latter part of June or early July the water ceases to flow beyond the McKean Bridge. Protestants whose property is below said bridge naturally can claim no rights, either appropriative or riparian, to water which

does not reach them in a state of nature."

"Water flowing beyond the several points of diversion of the protestants above McKean Bridge and not reaching, in useable quantity, the protestants below the McKean Bridge is clearly unappropriated."

"... the application herein is for a permit to appropriate water for domestic, municipal and industrial purposes. For such purposes water is required in winter as well as summer time. If supply should be short during the period of orchard irrigation deficit could be made up by water from another source such as pumping from wells. Applicant submits that permit should be issued even though it is possible that for a very short period each year water flowing beyond the point of diversion is all appropriated. The law does not require a showing that there is unappropriated water at the point of diversion at all times. Here the showing is that there is unappropriated water at the proposed point of diversion at practically all of the time."

"Applicant is aware of the fact that a permit to appropriate does not entitle the permittee to invade the right of any prior appropriator or riparian user."

"Applicant therefore submits that protestants cannot be hurt by the issuance of the permit to which applicant respectfully submits it is clearly entitled."

An affidavit by Protestant C. F. Burmahln, submitted October 13, 1953, contains statements as follows:

"That during the month of July 1953, he observed the flow of water in the Los Alamitos Creek and the place in said creek where the flow of water stopped.

"That on July 1, 1953, the flow of the water in the Los Alamitos Creek stopped approximately 2800 feet below the bridge over said creek at McKean Road. That said flow on or about July 5, 1953, receded approximately 1000 feet, remaining the same until July 8, when said creek receded an additional 1000 feet. On July 11, 1953, the flow receded an additional 500 feet and remained approximately the same until the 30th day of July at which time the flow of water stopped within 300 feet of the bridge over McKean Road."

### Other Available Information

The surface flow of the source filed upon (variously called Almaden, Los Alamitos and Alamitos Creek) has been measured by the United States Geological Survey at a station designated "Alamitos Creek near Edenvale, Calif." and located within Section 16, T8S R1E, MDB&M, about 0.4 mile upstream from the confluence of that stream with Los Capitancillos or Guadalupe Creek. According to Water Supply Paper 1215 the watershed above the gaging station is 35 square miles in extent, discharge over a 21-year period has averaged 17.1 cubic feet per second, flow has been regulated by Calero Reservoir (capacity 9,213 acre feet) and Almaden Reservoir (capacity 2,500 acre feet), beginning in 1935. Monthly mean discharges at the station under discussion for the period of published record are set forth in an accompanying table.

Appropriations from Los Alamitos Creek include appropriations by Santa Clara Valley Water Conservation District, for irrigation and domestic purposes, under the following filings:

Application 7141 Permit 4916 License 2205, 2500 acre-feet per annum from Almaden Creek within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of projected Section 11, T9S R1E, MDB&M, the water being collected between December 1 and April 30, held temporarily in Almaden Reservoir (just above the point of diversion) and then "charged into the storage basin underlying Santa Clara Valley Water Conservation District at rates in keeping with the absorptive capacity of the stream channel and spreading grounds provided,"

Alamitos Creek near Edenvale

Mean Discharges in Cubic Feet per Second

Water Year	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Year
1930-31													0.0
31-32			126.	52.0	101.	13.7	1.56						24.4
32-33				6.93	2.38	2.17	2.63						1.17
33-34			14.5	49.9	32.8	19.0	1.21						9.70
34-35				43.2	6.45	37.2	70.7	10.6					14.0
35-36				4.52	55.0	48.3	41.1	8.28	5.22				13.3
36-37				1.87	57.1	65.6	30.7	28.2	25.3	26.1	34.0	10.5	23.1
37-38			77.1	23.1	313.	204.	38.7	19.8	24.7	22.4	24.5	13.7	61.8
38-39			10.7	0.04	2.43	5.91	12.4	0.10					6.09
39-40				19.6	111.	57.0	36.2	19.8	32.6	34.9	29.7	23.4	30.0
40-41			12.7	33.4	91.8	141.	173.	19.3	22.5	25.4	28.0	25.4	48.4
41-42			19.2	43.0	51.8	42.4	70.9	19.2	16.5	17.6	25.1	9.3	29.2
42-43			11.3	91.5	23.4	19.6	15.0	22.4	19.6	21.5	18.9	20.2	23.4
43-44			0.40	0.97	8.60	23.9	8.32	8.43	23.4	23.1	19.6	0.70	12.7
44-45				0.74	103.	11.9	3.60	9.59		22.5	26.7	15.9	15.6
45-46			23.7	25.5	14.2	17.5	12.2	5.47		10.5	8.21		9.81
46-47					7.8	8.68	3.88						1.65
47-48							16.2	16.1	0.41				2.73
48-49				6.50	6.63	43.9	30.6	27.7	13.9				10.3
49-50				19.2	13.8	12.6	8.16	2.80					3.59
50-51			34.3	17.8	22.6	19.8	23.6	30.5	34.9	15.9	0.07		18.2

the water thus stored underground being "recovered for use on overlying lands within the District by means of pumping plants as and when required." According to the application and the application map Santa Clara Valley Water Conservation District comprises 133,000 acres, its southern boundary meanders in an easterly and westerly direction, intersecting Almaden (Alamitos) Creek at or near the junction of that stream with Guadalupe Creek. The application contains explanatory statements to the effect that Almaden Reservoir will be utilized as a regulator "with which flood crests which would otherwise waste into San Francisco Bay will be retained temporarily until they can be conveniently charged into the ground water storage basin" underlying the District, that releases from surface storage will be spread upon receptive areas within the natural stream channel and outside of the natural stream channel within the District boundaries, that recovery from underground storage will be made by private users and public agencies acting for them at plants throughout the area of the District, that releases from surface storage will be diverted from the channel at points within the District wherever convenient, that such diversions will be of various types and capacities, that recovery from underground storage will be by pumping plants of various types and capacities, that rediversion works will be of a changing and temporary nature and that works for recovery of water stored underground will be constructed by the users thereof.

Application 8099 Permit 4920 License 2209, 6,000 acre feet per annum from Almaden Creek at a point within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of projected Section 11, T9S R1E, MDB&M, the water being diverted between December 1 and April 30, conducted by canal (6.1 miles long, 100 cubic feet per second in capacity) to Calero Reservoir on Calero Creek, tributary to Almaden (Alamitos) Creek. The waters accumulated in Calero Reservoir are to be released therefrom, passed downstream via Calero, Almaden (Alamitos) and Guadalupe Creeks, charged underground and eventually recovered and utilized, all in the same manner as described in Application 7141.

Appropriations from Calero Creek (tributary to Los Alamitos Creek) include appropriations as follows:

Under Application 7095 Permit 4462 License 2120, Charles V. and Marjorie L. Miller, 1 cubic foot per second, April 1 to September 15, at a point within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of projected Section 36, T8S R1E, MDB&M, for irrigation of 55 acres of orchard and 25 acres of pasture. A report covering an inspection of the development on May 15, 1951 contains statements, among others, as follows:

"Due to the lowering of the water table in this area, water is only available, normally, until about June 15, but it is used whenever available. Water to carry through the balance of each season is derived from a deep well at a considerably higher pumping cost."

An earlier report upon the same development, as of April 21, 1938, sets forth:

"Calero Creek ... has a watershed of some 8 square miles of low lying sparsely timbered terrain. Estimated flow was 6 c.f.s. Summer flow ... diminishes at times to about .65 c.f.s."

" ... 30' south ... of the creek a well was bored 39' deep .... Later a ... cribbed pit was dug 16' deep alongside the well and the casing opened up at several points to admit water from the pit. The pit was then connected to the stream by 50' of 12" concrete pipe laid about 2' under the creek bed. As nearly as could be seen all water diverted is creek water."

Under Application 8098 Permit 4919 License 2208, Santa Clara Valley Water Conservation District, 3500 acre feet per annum, collected between December 1 and April 30 from Calero Creek, stored temporarily in Calero Reservoir, later released (via Calero and Alamos Creeks) for recharging of storage basins within the District's boundaries. Point of diversion (impounding dam), within NW $\frac{1}{4}$  NE $\frac{1}{4}$  of projected Section 6, T9S R2E, MDB&M. Purpose, domestic use and irrigation.

Of the 35 square miles of watershed above "Alamos Creek near Edenvale" about 12 square miles, according to the Los Gatos quadrangle, U. S. Geological Survey, lie above Almaden Reservoir and about 8.7 square miles lie above the applicants' proposed intake. Elevations are about 200 at the gaging station, about 515 at the Almaden Reservoir dam, about 620 at the point where the applicants seek to appropriate. The most elevated and most rugged portion of the watershed is the 8.7 square miles above the last named point, elevations there ranging up to 3806 feet. Runoff from that portion may be presumed to be relatively large.

Distances downstream from the applicants' proposed point of diversion, in miles, scaled from maps of the locality, are approximately as follows:



To Almaden Dam	1.0 mile
To New Almaden (Bertram Road)	1.9
To Hacienda School	2.5
To McKean Road bridge	4.0
To Graystone	6.0
To Elwood Road	6.5
To U.S.G.S. gage	8.0
To Guadalupe River	8.4
To Robertsville	9.5
To center of San Jose	15.0
To San Francisco Bay (tide flats)	24.0

#### Discussion

At Almaden Dam, approximately 1 mile below the applicants' proposed point of diversion, on Los Alamos Creek, Santa Clara Valley Water Conservation District is authorized under licensed Applications 7141 and 8099 to collect and/or divert, between December 1 and April 30 of each season, a total of 8,500 acre-feet, said water to be stored in part in Almaden Reservoir and in part in Calero Reservoir, all of it to be later released into Los Alamos and Calero Creeks for redistribution far downstream and replenishment of underground storage within the District boundaries. A flow of 8,500 acre-feet per annum is equivalent volumetrically to an average flow of 11.75 cubic feet per second for 1 year. According to the published record the flow of "Alamos Creek

near Edenvale" has averaged 17.1 cubic feet per second over a period of 21 years but in 9 of those years flow averaged less than 11.75 cubic feet per second and unappropriated water was therefore probably non-existent. A flow of 8,500 acre feet per annum is also equivalent to a flow of about 141 cubic feet per second for 1 month, i.e. to 141 second-foot-months. In the water-years just before Almaden and Calero Reservoirs came into operation, six in number, flow passing the gage from December 1 to April 30 -- the District's collection period -- in second-foot-months, is of record as follows:

<u>Water-year</u>	<u>December</u>	<u>January</u>	<u>February</u>	<u>March</u>	<u>April</u>	<u>5-month Total</u>
1930-31	0	0	0	0	0	0
31-32	126	52	101	13.7	1.56	294.26
32-33	0	6.93	2.38	2.17	2.63	14.11
33-34	14.5	49.9	32.8	19.0	1.21	117.41
34-35	0	43.2	6.45	37.2	70.7	157.55
35-36	0	4.52	55	48.3	41.1	148.92

Had the District's dams been in operation during the 6 five-month periods considered and had the District exercised its rights to fill its reservoirs prior to diversion by a junior upstream appropriator it is apparent from the tabulation that little if any water would have been available to that appropriator during those periods except during February, March and April of 1932 and during late April of 1935 and 1936, i.e. during 5 of

the 30 months considered. Since the watershed tributary to the Almaden Dam is but 12/35 of the watershed tributary to "Alamitos Creek near Edenvale" there might well have been no unappropriated water at all.

As to months other than December, January, February, March and April — a total of 42 months within the 6-year period — the record indicates that flow occurred at "Alamitos Creek near Edenvale" during 3 months only. That circumstance indicates not only the non-existence, most of the time, of water at the point of measurement; it also indicates that supply probably was unequal to demand at points upstream. That such is the case currently is established by the testimony of numerous witnesses at the hearing, those witnesses generally agreeing that irrigation begins in May, that supply diminishes rapidly and either fails or becomes extremely scanty in the reach extending upstream to the vicinity of McKean Road bridge (some 4 miles above the USGS gage) by late June or early July. The cessation of surface flow at or near McKean Road bridge is prima-facie evidence that flow that might reach that point in a state of nature is fully utilized. In the face of that circumstance together with the testimony as to the utilization of water on the Rohrbacher, Finley, Sclafney and Anzalone properties the surface flows ranging up to 4.56 cubic feet per second in June and up to 2.19 cubic feet per second in July, 1953, approximately 2 miles upstream from McKean Road bridge, testified to by Witness Whitcomb, must, in the absence of evidence to the contrary,

be presumed to be utilized beneficially at points downstream, and not to be subject to appropriation.

#### Summary and Conclusion

The applicants seek to appropriate 3 cubic feet per second year-round, from Los Alamitos Creek, sometimes called Alamitos or Almaden Creek, in Santa Clara County, for domestic, municipal and industrial purposes. Los Alamitos Creek is tributary via Guadalupe Creek and River to San Francisco Bay. The applicants, a public utility, doing business under the name "Black's Almaden Water System" seek the water in question for the stated purpose of serving additional residents in and about the village of Almaden and of selling water to San Jose Water Works, also a public utility, for distribution to more remote areas.

The application is protested by a group of some 120 property owners who claim that the flow of Los Alamitos Creek is insufficient to supply the amount sought by the applicants in addition to supplying their (the protestants) irrigation and domestic requirements. The application was heard at San Jose on June 30 and July 1, 1953.

The major diverter of water from Los Alamitos Creek and from its tributary, Calero Creek, is Santa Clara Valley Water Conservation District. That District has a 2500 acre-foot reservoir (Almaden Reservoir) on Los Alamitos Creek, a mile or so below the applicants' proposed intake, and a 9500 acre-foot reservoir (Calero Reservoir) on Calero Creek. It is licensed to collect 2500 acre-feet per annum from Los Alamitos Creek in

Almaden Reservoir, to divert 6000 acre-feet per annum from Los Alamitos Creek for storage in Calero Reservoir, to collect 3500 acre-feet per annum from Calero Creek in Calero Reservoir, a total of 12,000 acre-feet per annum from the two creeks. The water is collected in the two reservoirs between December 1 and April 30, later released down the two creeks to their junction, thence via Los Alamitos Creek and Guadalupe River to spreading works within the District boundaries.

Los Alamitos Creek has been gaged by the United States Geological Survey since 1930 at a station designated "Alamitos Creek near Edenvale," that station scaling some 2.7 miles below the point where Calero Creek joins Los Alamitos Creek and some 8 miles below the applicants' proposed intake. The flow of "Alamitos Creek near Edenvale" over the period of published record has averaged 17.1 cubic feet per second, equivalent to about 12,500 acre-feet per annum. Eight thousand five hundred acre-feet collected between December 1 and April 30, the entitlement of Santa Clara Valley Water Conservation District to divert from Los Alamitos Creek at Almaden Dam or to collect behind Almaden Dam, is equal, approximately, to 141 second-foot-months. In the 6 water-years before Almaden and Calero Reservoirs came into operation, December flow at the gaging station (near Edenvale) never equalled that figure, December flow plus January flow exceeded it in one year only, flow from December 1 to March 31 exceeded it in one year only, flow from December 1 to April 30 exceeded it in 3 years.

In 2 of the 6 months of May flow exceeded 3 cubic feet per second but in the other 4 Mays flow was zero. Flow was zero in 5 of the 6 Junes of that period and it was also zero during every July, August, September, October and November. In the 6 water-years just considered flow averaged about 61% of the 21 year mean. Flow during 9 of the 21 water-years of record has been no more than 61% of the 21 year mean.

The testimony at the hearing was to the general effect that there are numerous diversions by individuals from Los Alamitos Creek, that the diversions are for domestic and irrigation purposes, that diversions are effected by pumping, either directly from the creek or indirectly from wells supplied by the creek, that irrigation begins in May, that supply diminishes rapidly and fails or nearly fails by late June or early July within the reach below McKean Road bridge (some 4 miles below the applicants' proposed intake), that flows ranging up to 4.56 cubic feet per second in June and up to 2.19 cubic feet per second in July occur below the applicants' proposed intake, that such flows are utilized by diverters above McKean Bridge.

The salient facts appear to be that present diversions from Los Alamitos Creek including the numerous diversions by individuals along the creek, the diversions by Black's Almaden Water System for distribution within its service area and the diversions by Santa Clara Valley Water Conservation District for recharging of underground storage

within its boundaries probably require the entire normal flow of Los Alamitos Creek. The data indicate that in the approximately 6-year period of record before the District's reservoirs came into operation the applicants (if their proposed appropriation and the District's appropriations had been in effect and the latter fully exercised) could not have diverted except during January, February, March and April of 1932, April and May of 1935 and April, May and June of 1936, a total <sup>of</sup> 9 months out of 72.

The circumstances point to the conclusion that unappropriated water exists, at times, in Los Alamitos Creek, during years of above-normal streamflow and at times during years of lesser streamflow when vested rights are not fully exercised; that when unappropriated water does exist it may be taken and used beneficially in the manner proposed in the application, without injury to lower users, to supplement supplies otherwise available to the applicants; that for the protection of downstream users diversions under Application 15081 should be restricted to periods extending from about November 1 of one year to about June 1 of the next; and that in any permit issued the subordination of rights under Application 15081 to the prior rights of Santa Clara Valley Water Conservation District should be emphasized. In view of these conclusions it is the opinion of this office that Application 15081 should be approved and permit issued, subject to the usual terms and conditions but with diversions thereunder limited to periods extending from about November 1 of one year to about June 1

of the next and subject to a special term and condition emphasizing the subordination of the application to the prior filings on Los Alamitos (Almaden) Creek by Santa Clara Valley Water Conservation District.

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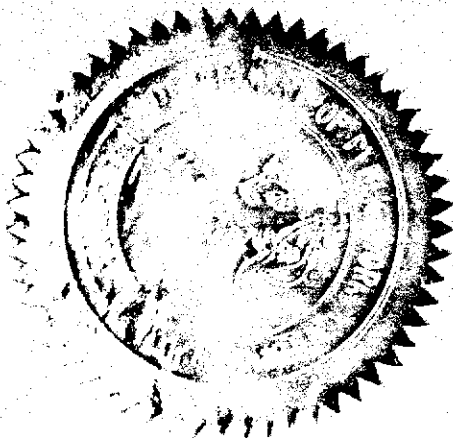
ORDER

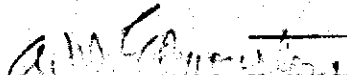
Application 15081 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests having been filed, a hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15081 be approved and that a permit be issued to the applicants, subject to such of the usual terms and conditions as may be appropriate, subject to limitation of the season of diversion to the period from November 1 to June 1 and subject to the following special term and condition, to wit:

Issuance of this permit shall not operate to the prejudice of any prior rights, including rights initiated by the filing by Santa Clara Valley Water Conservation District of Applications 7141 and 8099.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 3rd day of December 1954.



  
A. D. Edmonston  
State Engineer