

STATE OF CALIFORNIA
PROCEEDINGS BEFORE THE
STATE WATER RIGHTS BOARD

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In the Matter of Application 16477 by Irene P. Eaton and Samuel J. Eaton to appropriate from Le Montains Creek, tributary to Mojave Desert, in Los Angeles County, for Domestic, Irrigation and Recreational Purposes.

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Decision A 16477 D 862

Decided September 19, 1956

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Appearances at Hearing Held at Los Angeles on May 16, 1956:

For the Applicants

Irene P. Eaton and

Samuel P. Eaton

Samuel J. Eaton

John Wall

For the Protestants

Thomas J. Buchanan

Ray C. Eberhard, Attorney at Law

John R. Burke

in propria persona

Boy Scouts of America

C. T. Waldo and E. F. Dibble

For Interested Parties

Smithson Springs Water Company Everett L. Clark

and William S. Schwartz

EXAMINER - W. R. Gianelli, Principal Hydraulic Engineer,
Division of Water Resources, Department of Public Works.

Assisting the Examiner - Gavin M. Craig, Senior Attorney and
J. J. Heacock, Senior Hydraulic Engineer, Division of Water
Resources, Department of Public Works.

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DECISION

Substance of the Application

The application initiates an appropriation of one cubic foot per second, year-round, from Le Montaine Creek, tributary to Mojave Desert, in Los Angeles County, for domestic, irrigation and incidental recreational purposes. The water is to be diverted at a sump in the unobstructed channel and dug well, within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, T4N R8W, SBB&M, and conveyed through a 6-inch diameter steel pipe line, 11,250 feet long, to a designated place of use within Section 20, T4N R7W, SBB&M. The applicants propose to serve water to approximately 220 one-acre tracts. They state that there will be an average of 3 persons to each tract, that domestic use will require about 750 gallons per day per tract, that each tract owner will own his proportionate share of the water right, that a public utility will be formed if negotiations for conduit rights of way across private lands fail, that if a public utility is formed each tract owner will be entitled to a proportionate use of the water. The applicants state that they presently own the land where the water is to be used but that the proposed point of diversion is within Angeles National Forest.

Protests

Thomas J. Buchanan protests that the applicants' proposed appropriation will cause serious interference with his own

appropriation under Application 11432 Permit 7588 under which he is entitled to divert one cubic foot per second from Le Montaine Creek at a point within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, T4N R8W, SBB&M, for domestic use. He states that measurements indicate that the flow of Le Montaine Creek is insufficient to permit any further appropriation from that stream. He states further that he has commenced the development authorized under his permit and desires to press that development to completion.

John R. Burke protests that the appropriation sought by the applicants would render useless a certain reservoir, constructed at great expense, as well as the mile or more of pipe and other conduit leading thereto. He states that the reservoir is used to store water which in turn is used for domestic purposes, irrigation and fire fighting. He claims a water right under Application 13860 Permit 9134 to divert at a point within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T3N R8W, SBB&M. His protest also contains statements to the effect that water has been used by him or his predecessors for 40 or more years, that past use has included irrigation and stockwatering, that more extensive use is contemplated in future.

Answers

In answer to the Buchanan protest the applicants deny the insufficiency of water alleged therein, deny that Protestant Buchanan has commenced or accomplished any development of water

under any permit that he may hold, deny that that protestant has any rights whatsoever in the waters of Le Montaine Creek. They allege that if Protestant Buchanan holds Permit 7588 he has lost by abandonment all rights thereunder, that Protestant Buchanan has not used any waters of Le Montaine Creek for over 5 years and is unable to make any use thereof, and that the waters of Le Montaine Creek are and for many years have been wasted.

In answer to the Burke protest the applicants deny that any beneficial use is being made of waters of Le Montaine Creek and deny that Protestant Burke or anyone in his behalf has constructed a conduit for beneficial use of waters of that stream. They allege that Protestant Burke has not irrigated any crops with waters of Le Montaine Creek within the past 5 years, that no beneficial use has been made of said waters for many years, that said waters have been allowed to waste, that Protestant Burke has lost by abandonment any right that he may have had to divert from said creek, that if there is a reservoir on the Burke property no beneficial use has been made of same since its construction.

Hearing Held in Accordance with the Water Code

Application 16477 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 Wednesday, May 16, 1956, at 10:00 o'clock a.m., in Room 202,

1100 South Grand Avenue, Los Angeles, California. Of the hearing the applicants and the protestants were duly notified.

Testimony

Witnesses testified at the hearing as follows:

W. P. Rowe, Civil Engineer, testified (pages 10 to 28 of transcript) to the effect that he has been familiar with the Le Montaine area since about 1920, that the applicants' lands are about two miles distant from Le Montaine Creek, that those lands could be served from Le Montaine Creek by gravity, that on September 12, 1947 he determined the flow of Le Montaine Creek to be about 35 gallons per minute, of which about half was being diverted to the Knauf place (now owned by the Boy Scouts of America), that the flow at that time represented minimum flow, that it was a part of the underflow of Le Montaine Creek, rising at the junction of two streams (at applicants' proposed point of diversion), sinking underground a short distance farther downstream but within Angeles National Forest, that the diversion pipe leading to the Knauf property was broken, leaking and delivering very little water, that as far as he knows none of the flow of Le Montaine Creek has been used beneficially except at one house, for domestic purposes, on the Knauf (Boy Scouts) place. Witness Rowe's testimony also included statements to the effect that in his opinion additional water can be developed at the applicants' proposed point of diversion, that possibly the present supply may

be doubled, that a yield of three miner's inches from Le Montaine Creek may be considered firm.

Charles C. Beardsley, District Ranger, United States Forest Service, testified (pages 28 to 42 of transcript) to the effect that he is stationed at Valyermo, that he believes the applicants' proposed point of diversion to be within Valyermo District, Angeles National Forest, that he has been District Ranger at Valyermo for about 12 years, that Thomas Buchanan holds two special use permits (dated May 28, 1948) and Samuel Eaton one special use permit (dated July 25, 1955), for water transmission, that no other permits relating to Le Montaine Creek have been granted by the Forest Service as far as he knows, that Thomas Buchanan's permit is still in force, that he is well acquainted with Le Montaine Creek including the applicants' proposed point of diversion, that as far as he knows Mr. Buchanan has made no beneficial use of waters of Le Montaine Creek, that some water from Le Montaine Creek has been used on the Horton Ranch (now claimed by the Boy Scouts) but that he does not know how much or for what purpose, that people have lived on the Horton Ranch intermittently, that the number of houses is small, that there are no orchards there or growing crops or vineyards so far as he knows, although there have been some in the past. Witness Beardsley's testimony also included statements to the effect that the Boy Scouts' land is not within the National Forest, that the Boneyard Canyon quadrangle is more nearly correct than the San

Antonio quadrangle, that the applicants' proposed point of diversion is within the National Forest.

J. J. Heacock, Senior Hydraulic Engineer, Division of Water Resources, testified (pages 44 to 69 of transcript) to the effect that the applicants' proposed point of diversion and Protestant Buchanan's described point of diversion are at about the same location which appears to be a short distance upstream from the confluence of two channels, that both channels have rising water, that at the time of the field investigation (on March 1, 1956) some water was being diverted to the Boy Scouts' lands (Horton place) but there was no evidence that the water was being used beneficially, that some 10 to 12 gallons per minute was reaching to within a few feet of a reservoir but were wasting on the ground, that some excavating had been done in the channel of Le Montaine Creek, an earth dam constructed, a pipe extending through the dam, 40 gallons per minute flowing through the pipe, that the conduit leading to the Boy Scouts' property heads 200 or 300 feet below the earth dam, that the conduit leading to that property included old pipe which leaked considerably, that on the Boy Scouts' property there are three houses, that an old orchard which once undoubtedly received water is practically all gone, that an old concrete pipe and rubble channel leading to a small reservoir are fairly well obliterated, that he (the witness) investigated the same property in 1948, that two of the residences

were then occupied and there was limited use of water for domestic purposes and possibly for irrigation of the old trees and vines, that after the 1948 investigation but before the visit in 1956 a concrete lined reservoir was built on the property with a ditch leading to it from Le Montaine Creek, that at the time of the 1956 investigation there was no water in the reservoir, that during the 1956 investigation Mr. Buchanan stated that he had never made any use of water from Le Montaine Creek.

Closing Statements

By Mr. Eaton, for the applicants, to the effect that the waters of Le Montaine Creek are shown by the evidence to be unappropriated, that according to the evidence water exists, that despite the filing of earlier applications no beneficial use has been made, that the need for beneficial use is urgent, that the applicants are in a position to apply the water to maximum beneficial use, that the protestants in six years have done nothing toward developing the water and now stand mute, refuting or contradicting no testimony, allowing the water which would sustain several domestic units, to waste.

By Mr. Eberhard and Mr. Waldo, for the protestants, to the effect that protestants' permits, as extended, are in full force and effect, that applicants have not shown the existence of unappropriated water and have presented nothing that requires reply.

By Mr. Clark, for interested parties, to the effect that Smithson Springs Water Company is a public utility supplying water obtained from Boneyard Canyon to certain lands in Sections 17, 18 and 19, T4N R7W, SBB&M, that its water supply is insufficient and will have to be supplemented, that Le Montaine Creek has been considered as a source of supplemental supply, that the applicants' proposed pipeline would appear to represent a duplication of facilities, that William S. Schwartz is interested in lands that the applicants' conduit would have to traverse and objects to granting right of access across his lands.

Exhibits

The San Antonio and Boneyard quadrangles, United States Geological Survey, were introduced in evidence by reference (page 18 of transcript).

The files of the Division of Water Resources pertaining to Applications 11432, 13860 and 16477 were also introduced in evidence (page 21 of transcript) by reference. The information contained in the files pertaining to the applications includes the following:

Under Application 11432. Permit 7588 Thomas J. Buchanan may divert 1.0 cubic foot per second, year-round, from Le Montaine Creek, at a point described as bearing South 24° West, 2940 feet from the NE corner of Section 26, T4N R8W, SBB&M, for domestic purposes, upon certain lands within Sections 1, 2 and 12 of that

township. Under current extension the time within which construction work and application of water to beneficial use shall be completed has been extended to December 1, 1958. Decision 617 in the matter of Application 11432 contains the following passage:

"Photographs ... during the field investigation suggest that the flow of Le Montaine Creek at times is considerable. That is attested by the size of the channel and by the accumulation therein of ... debris. However ... the stream channel at the time of the investigation (on May 5, 1948) was dry or nearly dry and the measured flow on September 12, 1947, according to a statement attributed to Applicants' Engineer W. P. Rowe, was but 3.3 Southern California miner's inches. Engineer Rowe is said to have estimated that at least 0.10 cubic foot per second can be developed"

Under Application 13860 Permit 9134 the Boy Scouts of America, San Fernando Valley Council, Inc., may divert 3.0 cubic feet per second, year round, from Le Montaine Creek, at a point described as bearing South 55°42' West, 6163.9 feet from the SE corner of Section 24, T4N R8W, SBB&M, for irrigation and incidental domestic purposes upon some 700 acres within Sections 24 and 25 of the same township. Application 13860 was protested by the holder of Application 11432 Permit 7588 and a field investigation was conducted on July 28, 1952 by an engineer of the Division of Water Resources. The field investigation developed that the parties' points of diversion are some 500 feet apart, the protestant's being the uppermost of the two and the protest was accordingly withdrawn. Under the terms of Permit 9134 water diverted thereunder shall be completely applied to beneficial

use by December 1, 1956.

The report covering the field investigation in connection with Application 16477 on March 1, 1956 (referred to in Witness Heacock's hearing testimony), contains among other statements the following:

"Le Montaine Creek rises in ... the northerly slopes of Table Mountain and trends in an east of north direction, debouching onto the desert The watershed above the point of diversion contains about 1.9 square miles of steep mountainside, rising from ... about 5,300 feet to over 7,500 feet in about 1.5 miles."

"Hydrologic data in the area is scarce, and the character of the country is such that reliable data for one location is of little value for correlation"

"The several points of diversion (of the parties) are near the junction of two small canyons that each has areas of rising water. Several spot measurements have been made at or near the junction of the canyons and are as follows:

Date	Measured by	Approximate :gallons per minute
9/12/47	Rowe	35
7/ 5/50	Buchanan	18
7/28/52	DWR	60*
10/21/52	Lynch	48
3/ 1/56	DWR	40

* ... after a heavy summer rainstorm."

"It appears that the only use that has been made of surface flow from Le Montaine Creek has been by predecessors of the Boy Scouts At one time about

16 acres of orchard and other crops were irrigated, and water has been used for domestic purposes at three houses. At least a portion of the irrigated land appears to be on non-riparian lands ... irrigated under a claimed prior right. The extent of the prior right, or the impairment, if any, thereof has not been determined."

"John Burke, the immediate predecessor of the Boy Scouts ..., constructed a large concrete lined reservoir above the place of use."

"Protestant Buchanan has done recent exploratory work in the channel near the points of diversion."

Discussion

A prerequisite to the issuance of a permit, under the Water Code, is that there must be unappropriated water available to supply the applicant. That prerequisite evidently cannot be met, unless briefly, under the circumstances surrounding Application 16477. In the considered judgment of applicants' witness Rowe, an engineer of conceded competence, the firm yield that may be expected from Le Montaine Creek is but three miner's inches, equivalent to 0.06 cubic foot per second, an amount which not only is small in comparison with the appropriations sought by the applicants but also is small in comparison with the appropriations authorized under Permits 7588 (Buchanan) and 9134 (Boy Scouts of America). True, the appropriations covered by permits have not yet been consummated and to that extent the applicants' contention that unappropriated water exists, is valid. The fact however that the flow of Le Montaine Creek or the most of it has thus far wasted does not mean that the waters of that stream are not in process of appropriation or that they will long continue to waste. Permits 7588 and 9134 are

presently in force and effect. If and when perfected, rights under those permits will be prior to any that could be established under Application 16477. It may be assumed that the projects under those permits will be pressed with reasonable diligence. If the projects are so pressed the flow of Le Montaine Creek will be diverted in full for the benefit of those projects and unappropriated water will no longer exist. In view of the nature of the use proposed by applicants the period which probably remains before the projects under Permits 7588 and 9134 come into operation is deemed too short to justify a temporary appropriation, limited to that period, for the purposes to be served under Application 16477.

Conclusion

The available information indicates that the flow of Le Montaine Creek is in process of being appropriated under permits issued pursuant to applications filed prior to Application 16477, that unappropriated water in that stream, unless at times of flood, will be nonexistent when the projects under those permits come into operation, and that said projects may be supposed to be pressed with due diligence and to come into operation too soon to enable the applicant to beneficially utilize such flow as may be available meanwhile. In view of the circumstances it is the opinion of the State Water Rights Board (successor in jurisdiction to the Division of Water Resources on July 5, 1956 in

matters relating to the appropriation of water) that approval of Application 16477 is unwarranted and that the application should therefore be denied.

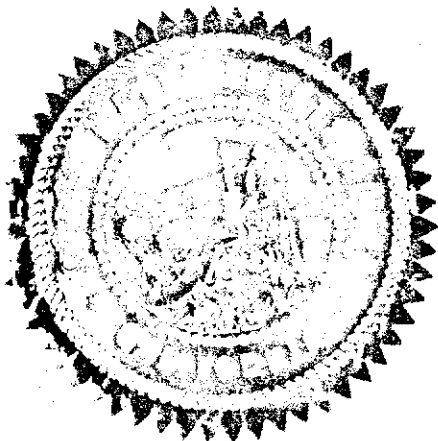
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ORDER

Application 16477 for a permit to appropriate unappropriated water having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Water Rights Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16477 be rejected and canceled upon the records of the State Water Rights Board.

Dated at Sacramento this 19th day of September, 1956.



Henry Holsinger
Henry Holsinger, Chairman

John B. Evans
John B. Evans, Member

W. P. Rowe, Member

W. P. Rowe, Member, deeming himself disqualified, did not participate in the above decision.