

STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
BEFORE THE STATE ENGINEER AND  
CHIEF OF THE DIVISION OF WATER RESOURCES

oOo

In the Matter of the Petition of George C. Walton to Change the Point of  
Diversion Described in Application 6609.

oOo

Decision A. 6609 D. 759

Decided September 22, 1952

oOo

In Attendance at Investigation Conducted by the Division of Water Resources  
at the Site of the Proposed Diversion on May 13, 1952:

George C. Walton	Petitioner
George Arthur	Protestant
Louis Viemann	Successor in interest to Protestant Wallace T. McBeath
Floyd Puter	Representing Protestant Kenneth B. Pettis
James E. Munger) Curtis Woodruff) Hazel Weil )	Users from Musick pipe line
Harrison Smitherum	Supervising Hydraulic Engineer Division of Water Resources Department of Public Works Representing the State Engineer

oOo

OPINION  
Description of Proposed Change

The petitioner seeks permission to change the location of his point of diversion under Application 6609 Permit 3542 License 2268 from a point located 590 feet north and 978 feet east from the west quarter corner of Section 4, T 16 N, R 1 E, HB&M, to a point located 596 feet north and 998 feet east from the same quarter corner.

### Protests

Four substantially identical protests, in the names of David F. Norris (deceased) and Marie J. Norris, William Arthur and George Arthur, Wallace T. McBeath, and Kenneth B. Pettis, respectively, were filed against the petition. The protestants assert that the proposed change of the petitioner's point of diversion would so diminish the flow entering their common intake as to prevent them from receiving the amounts to which they are entitled. They state that their diversion points are located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, T16N, R1E, HB&M, and that they use water for domestic purposes throughout each year. In support of their claimed rights to use water they refer to approved Applications 5705, 8246 and 8252. They state that the petitioner has an adequate supply under his own rights in the E $\frac{1}{2}$  NW $\frac{1}{4}$  of the same Section 4 and that diverting more water at Dr. Stump's intake will adversely affect their supply. They state that their protests may be disregarded and dismissed if the petitioner files with the Division an affidavit that he will make no attempt now or in future to infringe upon their rights by appropriating or diverting water from Rock Creek in conflict therewith.

### Answers

In reply to the protests the petitioner addresses each protestant:

"Regarding my application for a change in point of diversion by tying into Dr. Stump's power line. I am at a loss to understand your ground for entering a protest as you well know that I will not be interfering with your water supply in any manner whatsoever, as Dr. Stump's point of diversion is 15 or 20 feet below your dam site.

"It appears to me that all that is necessary is to make some repairs to the old Musick dam site where your point of diversion is located.

"I am petitioning the Department of Water Resources for this change in order to avoid further difficulties and complications with some of the users in the Musick line.

"I hold a priority right in Rock Creek as I have been using water from there over 20 years and feel that my water right is secure."

Field Investigation

The petitioner and the protestants 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 in the vicinity of the petitioner's intake on May 13, 1952 by an engineer of the Division. The petitioner and the protestants were present or represented during the investigation, except the protestants Norris who were neither present nor represented.

Records Relied Upon

Application 6609 Permit 3542 License 2268 and all data and information on file therewith.

Discussion

Under licensed Application 6609 Petitioner Walton is authorized to divert 8750 gallons per day, year-round, from Rock Creek at a point 590 feet north and 978 feet east from the west quarter corner of Section 4, T16N R1E, HB&M, for domestic purposes and irrigation on a 2.5 acre place within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of the same Section 4.

According to the report of an inspection made of the petitioner's development on September 17, 1940 diversion was being effected by a dam 3 feet high by 13 feet long consisting of a log across the channel backed by 1 inch sheet piling. As to the conduit the same report states:

"From the dam 600' of 4", 700' of 3", 160' of 2" and 200' of 1" pipe under a head of 110' conveys the water to the place of use where it is distributed in 3/4" pipe lines.

\* \* \*

"The main pipe line is used by other permittees and licensees in the area and the line is well constructed."

The pipe line just described is sometimes called the "Musick Pipe Line," and besides having served Petitioner Walton (for a time) it evidently serves the protestants against the instant petition, also.

Another pipe line through which water is diverted from Rock Creek is the one which is a part of the so-called "Stump System." Francis M. Stump holds Application 8448 Permit 4836 License 3025, which authorizes a diversion of 0.46 cubic foot per second, year round, from a point 596 feet north and 998 feet east from the west quarter corner of Section 4, T16N R1E HB&M, for power purposes. According to the report of an inspection made of his project on September 23, 1941 he diverts by means of a masonry dam 8 feet high by 75 feet long and conveys water thence by flume and pipe line to his power house in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 5 of the same township.

By letter dated November 16, 1950 Mr. Walton advised:

"- - - I am using water from Rock Creek through Dr. Stump's pipe line, which he has allowed me doing since my water supply was cut off some time ago."

On February 13, 1951 his petition to change from the Musick pipe line to the Stump system was received, the reason for the change, as stated in the petition, being:

"My pipe line has been disconnected and water cut off. Using water through Dr. Stump's pipe line."

Further insight into the position of the protestants in protesting the petition is afforded by the following extracts from a letter from Protestant Pettis, dated May 7, 1952:

"- - - It is very disconcerting to have to be constantly on the alert to prevent infringement on one's water rights and the impairment of one's water supply. As I see it we "Musick" property owners have prior right and claim to Rock Creek water. We do not use all the water but we do want to be certain we can have what we do require whenever we need it. Walton should not be allowed to connect to any portion of our line (as he surreptitiously did on several occasions in the past). If he is allowed to take any water from Rock Creek it should be only through his own separate intake which should be located well below our intake (at least 300 feet below).

"Also, since we Musick water right holders do not wish to have any cloud on our title to Rock Creek water rights - (which might occur if we allowed withdrawal of water from Rock Creek by someone else), if Walton is allowed a separate intake as above mentioned, it should be stipulated and be a matter of record in any settlement of this dispute that our priority of right to Rock Creek water is recognized by Walton and that any right he (Walton) may establish for himself through this settlement and procedure is merely secondary to our right."

According to the report covering the investigation of May 13, 1952 the investigation began with a discussion as to the merits of the petitioner's right to water from Rock Creek. The parties present were advised of the petitioner's authorization under License 2268 to divert 8750 gallons per day from Rock Creek, through the Musick pipe line; and it was pointed out that the subject of the hearing was Mr. Walton's petition to change the point of diversion under that user's filing from the Musick line to the Stump system and that its particular purpose was to ascertain whether the change sought under the petition would affect other diverters from Rock Creek. The discussion also developed that the Musick pipe line heads at a point slightly upstream from the Stump intake. In view of Mr. Puter's insistence (on behalf of Protestant Pettis) that the proposed change would injure the users supplied from the Musick line the investigator, accompanied by Messrs. Walton, Puter, Viemann and Woodruff, proceeded to an examination of the headworks themselves, located about  $\frac{1}{4}$  mile up Rock Creek from the scene of the discussion. As to conditions at the headworks the investigator reports:

"The Musick Pipe Line has its intake upstream and at a higher elevation than the Stump intake. As described in previous reports, it appears that as first constructed the Musick Dam was about 3 feet in height and about 13 feet in length and was constructed of a log across the creek upon which rested a double row of 1" x 12" sheet piling. Presently the dam is constructed of vertical, wooden sheet piling supported by boulders and rocks piled across the channel of the creek and filled in with gravel. It is perhaps three feet in height; has the appearance of being temporary; and appears to be resting on the backfill which has washed in behind the Stump Dam.

"The Stump - - - - dam is a rock masonry structure about 8 feet high and 75' long. It is located about 15 feet downstream from the Musick Dam. The channel behind the Stump Dam has been filled with gravel washed in by the stream.

"The flow in Rock Creek above the Musick Pipe Line intake was estimated to be 1.75 c.f.s.

"It was not apparent that the protestants, all of whom receive water from the Musick Pipe Line, could be injured by the change petitioned for."

A total of eight active applications to appropriate from Rock Creek are at present before this office. All of them have been approved and all but one have been licensed. Seven of them represent developments that<sup>are</sup> supplied through the "Musick" pipe line and call for diversions which extend year-round, and use water for domestic purposes and minor irrigation aggregating about 0.064 cubic foot per second. The eighth application represents a power development involving diversion through the "Stump" intake of 0.46 cubic foot per second, year-round.

Estimates of the flow of Rock Creek made by engineers of this office during field inspections of operations under one or another of the applications under consideration are of record as follows:

<u>Application Reference</u>	<u>Date of Visit</u>	<u>Estimated Flow (cfs)</u>
8252	5/20/38	1.0
8246, 8409	6/19/39	1.5
5705, 6609	9/17/40	1.0
8448	9/23/41	0.5
8769	6/19/42	2.5
6609	5/13/52	1.75

#### Summary and Conclusions

The information before this office does not support the protestants' contention that the petitioner's proposed change in the location of his point of diversion will prevent them from receiving the amounts of water to which they are entitled. The flow of Rock Creek on each of the occasions when it has been estimated by representatives of this office has exceeded the aggregate of the

parties' known rights. That aggregate will be unaffected by the proposed change. The proposed change is from a point of diversion coincident with the point at which the protestants divert to a point some 15 feet downstream therefrom.

It is the opinion of this office, for the reasons just stated, that the protests against the petition of February 13, 1951 to change the point of diversion under Application 6609 are insufficient, that the change sought under that petition will not injure other users supplied from Rock Creek and that the petition therefore should be approved.

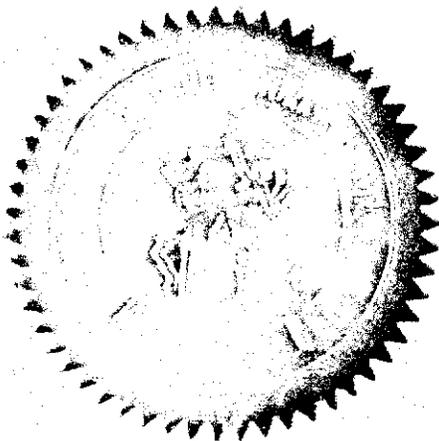
oOo

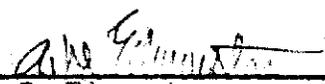
ORDER

A petition having been filed with the Division of Water Resources under date of February 13, 1951 for permission to change the point of diversion under Application 6609 Permit 3542 License 2268 as above stated, protests 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 the petition dated February 8, 1951 and received by the Division of Water Resources on February 13, 1951, for change in point of diversion under Application 6609 Permit 3542 License 2268 be approved.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 22nd day of September 1952.



  
A. D. Edmonston  
State Engineer