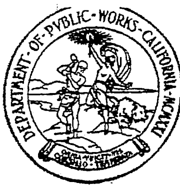

STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

License for Diversion and Use of Water

APPLICATION 5292 PERMIT 3212 LICENSE 3099

THIS IS TO CERTIFY, *That* Blalock-Eddy Ranch, Inc., Simi, California

has made proof as of May 4, 1948, *the date of inspection) to the satisfaction of the State Engineer of California of a right to the use of the water of* Big Rock Creek (underflow) in Los Angeles County

ributary to Mojave Desert

or the purpose of irrigation and domestic uses *under Permit* 3212 *of the Department of Public Works and that said right to the use of said water has been perfected in accordance with the laws of California, the Rules and Regulations of the Department of Public Works and the terms of the said permit; that the priority of the right herein confirmed dates from* December 2, 1926; and

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed four and sixty-eight hundredths (4.68) cubic feet per second to be diverted from January 1 to December 31 of each year.

In case of rotation the equivalent of such continuous flow allowance for any 30 day period may be diverted in a shorter time if there be no interference with vested rights.

The points of diversion of such water are located as follows:

(1) West eleven hundred seventy (1170) feet and South two hundred ten (210) feet, and

(2) West twelve hundred forty (1240) feet and South one hundred ninety (190) feet from NE corner of Section 6, T 4 N, R 9 W, S.B.B.&M., both being within NE¼ of NE¼ of said Section 6.

A description of the lands or the place where such water is put to beneficial use is as follows:

20 acres within NW¼ of SE¼ of Section 28.
15 acres within NE¼ of SE¼ of Section 29.
38 acres within SE¼ of SE¼ of Section 29.
16 acres within NE¼ of SW¼ of Section 32.
40 acres within SE¼ of NW¼ of Section 32.
34 acres within SW¼ of NE¼ of Section 32.
17 acres within NE¼ of NW¼ of Section 32.
40 acres within NW¼ of NE¼ of Section 32.
220 acres total, all within T 5 N, R 9 W, S.B.B.&M.

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Department acting through the State Engineer in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the State Engineer.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

FORM 64

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Department.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivison of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property can not agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Witness my hand and the seal of the Department of Public Works of the State of California, this 31st *day of* July, 1950

A. D. Edmonston
A. D. EDMONSTON
State Engineer

LICENSE 3099
STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

LICENSE
TO APPROPRIATE WATER

ISSUED TO Blalock-Eddy Ranch, Inc.

DATED JUL 31 1950

92121 6-48 2M STATE PRINTING OFFICE

STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

ORDER

APPLICATION 5292 PERMIT 3212 LICENSE 3099

ORDER ALLOWING CHANGE IN PLACE OF USE

Licensee having established to the satisfaction of the State Engineer that the change in place of use under Application 5292, Permit 3212, License 3099 for which petition was submitted on August 20, 1953, will not operate to the injury of any other legal user of water, the State Engineer so finds, and

IT IS ORDERED that permission be and the same is hereby granted to change the place of use under said Application 5292, Permit 3212, License 3099 to a place of use described as follows, to wit:

20 ACRES WITHIN SECTION 28, T 5 N, R 9 W, SBB&M
290 ACRES WITHIN SECTION 29, T 5 N, R 9 W, SBB&M
147 ACRES WITHIN SECTION 32, T 5 N, R 9 W, SBB&M
457 ACRES TOTAL

WITNESS my hand and the seal of the Department of Public Works of the State of California this 5th day of November, 1953.

A. D. EDMONSTON, STATE ENGINEER

By [signature]
Harvey O. Banks
Assistant State Engineer

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FORM 100

73995 1-53 5M SPO

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

ORDER

APPLICATION 5292 PERMIT 3212 LICENSE 3099

ORDER ALLOWING CHANGE IN PLACE OF USE

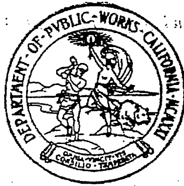
Licensee having established to the satisfaction of the State Water Rights Board that the change in place of use under Application 5292, Permit 3212, License 3099 for which petition was submitted on January 9, 1959 will not operate to the injury of any other legal user of water, the Board so finds, and

IT IS ORDERED that permission be and the same is hereby granted to change the place of use under said Application 5292, Permit 3212, License 3099 to a place of use described as follows, to wit:

20 ACRES WITHIN SECTION 28, T5N, R9W, SBB&M
290 ACRES WITHIN SECTION 29, T5N, R9W, SBB&M
40 ACRES WITHIN E½ OF SE¼ OF SECTION 31, T5N, R9W, SBB&M
537 ACRES WITHIN SECTION 32, T5N, R9W, SBB&M
42 ACRES WITHIN W½ OF NW¼ OF SECTION 4, T4N, R9W, SBB&M
476 ACRES WITHIN SECTION 5, T4N, R9W, SBB&M
40 ACRES WITHIN NE¼ OF NE¼ OF SECTION 6, T4N, R9W, SBB&M
1445 ACRES TOTAL AS SHOWN ON MAP FILED WITH STATE WATER RIGHTS BOARD.

WITNESS my hand and the seal of the State Water Rights Board of the State of California this 16th day of June, 1959

L. K. Hill
L. K. Hill
Executive Officer



STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

License for Diversion and Use of Water

APPLICATION 12762 PERMIT 7457 LICENSE 4015

THIS IS TO CERTIFY, *That* Blalock-Eddy Ranch
Route 1, Box 326
Simi, California *has* *made proof as of* July 9, 1953 *(the date of inspection) to the satisfaction of the State Engineer of California of a right to the use of the water of* Big Rock Creek in Los Angeles County

~~tributary~~ within Antelope Valley Watershed

for the purpose of irrigation use
under Permit 7457 *of the Department of Public Works and that said right to the use of said water has been perfected in accordance with the laws of California, the Rules and Regulations of the Department of Public Works and the terms of the said permit; that the priority of the right herein confirmed dates from* October 25, 1948; *and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed* three (3) cubic feet per second to be diverted from January 1 to December 31 of each year.

The point of diversion of such water is *located* north three hundred thirty (330) feet and west nine hundred ninety (990) feet from SE corner of Section 31, T 5 N, R 9 W, SBB&M being within SE¼ of SE¼ of said Section 31.

A description of the lands or the place where such water is put to beneficial use is as follows:

20 acres within Section 28, T 5 N, R 9 W, SBB&M
290 acres within Section 29, T 5 N, R 9 W, SBB&M
147 acres within Section 32, T 5 N, R 9 W, SBB&M
457 acres total, as shown on map filed with State Engineer.

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Department acting through the State Engineer in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the State Engineer.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

FORM 64

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Department.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property can not agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Witness my hand and the seal of the Department of Public Works of the State of California, this 12th *day of* November, *19* 54

A. D. EDMONSTON, *State Engineer*

By [signature]
HARVEY O. BANKS
Assistant State Engineer

LICENSE 4015

STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

LICENSE
TO APPROPRIATE WATER

ISSUED TO Blalock-Eddy Corp.

DATED

65987 8-53 3M SPO

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

ORDER

APPLICATION 12762 PERMIT 7457 LICENSE 4015

ORDER ALLOWING CHANGE IN PLACE OF USE

Licensee having established to the satisfaction of the State Water Rights Board that the change in place of use under Application 12762, Permit 7457, License 4015 for which petition was submitted on January 9, 1959 will not operate to the injury of any other legal user of water, the Board so finds, and

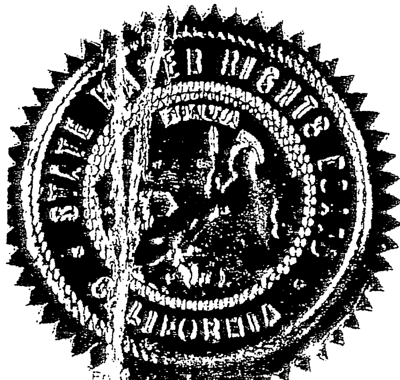
IT IS ORDERED that permission be and the same is hereby granted to change the place of use under said Application 12762, Permit 7457, License 4015 to a place of use described as follows, to wit:

20 ACRES WITHIN SECTION 28, T5N, R9W, SBB&M
290 ACRES WITHIN SECTION 29, T5N, R9W, SBB&M
40 ACRES WITHIN E½ OF SE¼ OF SECTION 31, T5N, R9W, SBB&M
537 ACRES WITHIN SECTION 32, T5N, R9W, SBB&M
42 ACRES WITHIN W½ OF NW¼ OF SECTION 4, T4N, R9W, SBB&M
476 ACRES WITHIN SECTION 5, T4N, R9W, SBB&M
40 ACRES WITHIN NE¼ OF NE¼ OF SECTION 6, T4N, R9W, SBB&M
1445 ACRES TOTAL AS SHOWN ON MAP FILED WITH STATE WATER RIGHTS BOARD.

WITNESS my hand and the seal of the State Water Rights Board of the State of California this 16th day of June, 1959

L. K. Hill
L. K. Hill
Executive Officer

3



BIG ROCK MUT. WATER CO.
v.
VALYERMO RANCH CO. ET AL.

Civ. 5311.
June 2, 1926.
Rehearing Denied July 2, 1926.
Hearing Denied by Supreme Court July 30, 1926.

Appeal from Superior Court, Los Angeles County; Charles Wellborn, Judge.

Action by the **Big Rock** Mutual Water Company against the **Valyermo Ranch** Company and others to quiet title to water. Judgment for defendants, and plaintiff appeals. Affirmed.

Hearing denied by Supreme Court; Shenk, J., dissenting.

William T. Kendrick and Victor H. Kendrick, both of Los Angeles, and Kibbey & Stoneman, for appellant.

John C. Packard, of Los Angeles, amicus curiæ.

Haas & Dunnigan, and H. E. Forster, all of Los Angeles, for respondents **Valyermo Ranch** Co. and others.

C. F. Holland, of Los Angeles, for respondent Lemon.

TYLER, P. J.

Action to quiet title to all the water of **Big Rock** creek, formerly known as Rio Del Lano, a natural nonnavigable stream situated in Los Angeles county. The stream has its source in the Sierra Madre mountains, and, flowing in a northerly direction to the plains below, known as Antelope valley, it passes what is designated in the record as "Sweet Tunnel." The complaint recites that plaintiff is the owner of all the waters of said stream which naturally flow by the head of said tunnel whenever the same does not exceed 2,000 standard miner's inches. Further allegations are to the effect that the defendants and each of them claim an estate or interest and a right to use some of the waters adverse to the plaintiff; that each of them is without any right whatever, as they have no interest in the water; that notwithstanding this fact defendants have entered upon the said stream and diverted large quantities of its water so belonging to plaintiff and appropriated it to their own use and deprived the plaintiff thereof. The prayer of the complaint is that each of them be required to set forth the nature of his claim so that all of the adverse interests of the various defendants may be determined by the action. Answers were duly filed on behalf of the defendants **Valyermo Ranch**Company, a corporation, Levi F. Noble, R. B. Pallett, and a separate answer was filed on behalf of J. Royal Lemon, successor in interest to one Bryon H. Kent, setting forth the respective interests of these defendants.

The **Valyermo Ranch** Company, by its answer, in substance alleges that its lands are riparian to the waters of the stream and within the watershed thereof, and that it has an interest in and a right to use said water. It denies that plaintiff was or ever has been entitled to the exclusive or any possession or use thereof as it flows past the said tunnel. It admits that it takes and for many years last past has taken water from said stream through pipe lines for distribution on its lands, and has been using the same to irrigate

alfalfa and deciduous fruit trees in an economical way, ***269** and that the alfalfa and trees are wholly dependent upon the water so taken for their growth and cultivation; that it has, during the last five years, actually appropriated and taken through the said pipe lines from the point of its diversion at all times during the irrigating season, openly, notoriously, and adversely to all the world and adverse to plaintiff and its stockholders and their predecessors in interest, a minimum of 180 inches of water and as much more up to the capacity of said pipe lines as has been necessary to be applied to its irrigable lands and for the watering of its livestock and for its domestic uses; that the lands owned by it are of a porous character and require for their proper irrigation and for the proper advantages and cultivation of the trees and crops all of the said 180 standard miner's inches of water during the irrigation season, and all of the same have been used for beneficial purposes; that said rights are claimed by the company as the owner of lands riparian to said stream and by virtue of actual appropriation; that said company, as riparian proprietor of land adjacent to said stream, is entitled to take said minimum of 180 inches and upwards to the capacity of said pipe lines at its point of diversion from the waters of said stream, the same to be applied to the uses and purposes set forth. It is then alleged that it is the owner of a minimum of 180 inches of water during the irrigating season and up to a maximum of 225 standard miner's inches or the capacity of its pipe lines. Substantially the same allegations are pleaded on behalf of defendant Robert B. Pallett. On his behalf it is alleged that for more than five years last past he has been the owner and in the possession of certain described lands adjacent and riparian to the stream and within its watershed, all of which lands are up stream and above the lands belonging to plaintiff or its stockholders; that he is now and has been diverting for the period stated, during the summer or irrigating season, a minimum of 150 standard miner's inches of water through an open ditch for the purpose of cultivating fruit trees, cereals, alfalfa, and like crops grown upon his lands; and that his use has been made openly, notoriously, and adversely to all the world under a claim of right, and he prays that said 150 standard miner's inches be awarded him. These defendants then ***270** allege that, should they be deprived of the waters so held by them or any part thereof, they will suffer irreparable damage and injury not capable of being measured in terms of money. As a further and separate defense they allege that plaintiff and its stockholders and predecessors in interest have been guilty of laches in not asserting any claim adversely to defendants during many years, and particularly during the five years last past. Estoppel is also pleaded. The answer filed by Byron H. Kent and J. Royal Lemon alleges that Kent has disposed of all of his interest in any ****266** lands and all water rights appurtenant thereto, and which are affected by the action, to J. Royal Lemon. This defendant also denies any rights in plaintiff to the waters, and he alleges that for more than seven years prior to November, 1918, he has been the owner of certain described lands riparian to and within the watershed of said stream situated above plaintiff's land, and that all of said land is desert in character and worthless without irrigation; that for seven years prior to the commencement of this action he has been diverting waters from the stream at a certain point through a ditch having a capacity of 100 standard miner's inches for the purpose of irrigating his orchard and alfalfa fields; that he has diverted the water openly, notoriously, and adversely to plaintiff. Laches and estoppel are also pleaded by him as a separate defense. General relief is prayed for by all of these defendants. Defendant Noble simply claims an interest as a stockholder in **Valyermo Ranch** Company, and his interest in the waters have been acquired by that company.

The issues thus presented were tried without a jury, and judgment was rendered in favor of the defendants, who appeared and answered. Under the judgment each was awarded a specific amount of water. The quantity allowed the **Valyermo Ranch** Company was 225 standard miner's inches, the defendant R. B. Pallett 170 inches, and J. Royal Lemon 100 miner's inches, and, in addition thereto, each of these defendants was found to be entitled to an additional indefinite amount of water for certain riparian lands described in the complaint, and the remainder of the flow was

found to belong to plaintiff. A new trial was asked for, and pending the hearing of the motion the judge who tried *271 the case resigned from office, and his successor heard the application. The motion was denied upon the ground that the time for passing upon the same was insufficient to permit of a proper examination of the voluminous record. The findings and judgment were, however, on motion of defendants, set aside and other findings were made, and another judgment based thereon was entered, and it is from this latter judgment that this appeal is taken.

It is the claim of appellant that the evidence is insufficient in law or in fact to show that plaintiff's title to the waters has in whole or in part been divested from it or its predecessor in interest either by appropriation or by prescription or by reason of the riparian rights of the defendants, except a portion thereof which had been decreed in a former action to belong to one Shoemaker, a predecessor in interest of lands now belonging to defendant Pallett.

[1] [2] So much of the same as is necessary for a discussion of the case shows in substance that in the year 1888 one Carter appropriated certain of the waters of **Big Rock** creek. Within 60 days after his notice was posted he commenced the construction of a ditch, and diverted water from the stream. The first amount of water taken was 1,250 miner's inches, which was later increased to 4,000. The water so taken was put to a beneficial use. The point of diversion was a short distance north of the tunnel above referred to, but in the year 1890 this point of diversion was changed and a new one made a little further south. On August 22, 1890, Carter conveyed all his rights thus acquired in the waters to the **Big Rock** irrigation district, which district thereafter took water from the stream and used the same for irrigating the lands within the district. The years from 1895 to 1903 were dry ones, and practically all of the owners of land within the district left the locality because of the drought. The irrigation officers of the district were among the number, their last meeting being held on June 5, 1900, and the district as such did not again function through its board of directors until some 14 years thereafter, when in the year 1914 a new board was appointed by the supervisors of Los Angeles county. The new directors took charge of the defunct district, and during the years 1916-17 employed two zanjeros, who attempted on a few occasions *272 to divide the waters when available among such owners as had remained in the locality. The district continued to be thus pretentiously operated until it was finally abandoned on February 17, 1919, upon petition of a majority of owners of land within the same. At this time, whatever rights as still remained in the district became vested in plaintiff by virtue of a decree of the superior court of Los Angeles county and a commissioner's deed executed by order of said court pursuant to the decree. There is evidence to show that during the years of nonusage by plaintiff's predecessor in interest and prior thereto, the waters of the stream were continuously used by the various defendants openly, notoriously, and under a claim of right, and that they made costly improvements to properly divert the water, running into many thousands of dollars. The use of the waters so made by defendants was without interruption by any one except that the zanjeros employed by the new board of directors at the time the district attempted to again function on a few occasions interfered with the full flow of the waters by breaking and placing obstructions in the ditch, but they never notified any one that such interference was made under a claim of right. The obstructions were, in each instance, immediately removed by defendants, who continued in their use of the waters. Acts of this character do not constitute an interruption of an adverse use of water. An occasional suspension or interruption of such use will not break the continuity of exclusive possession. Interruption, in order to constitute a tolling of the statute, must be open, and either upon a claim of right or so notorious as to constitute**267 such a claim. It must be of such a character as that required to initiate an adverse possession. A clandestine entry will not set the statute in motion, because the owner cannot, under such circumstances, be said

to have acquiesced in the wrongful entry. Armstrong v. Payne, 188 Cal. 592, 206 P. 638; 2 Farnum on Waters, § 2; Corp. Jur. p. 96.

[3] [4] The evidence upon the question of adverse use of the waters by the various defendants is voluminous. It shows that, while their respective rights were acquired at different times, they all made a beneficial use of the amount of waters claimed by them adversely, and for a period of ***273** time sufficient to acquire a title by prescription and adverse possession. There is also evidence to show that the predecessors in interest of the **Valyermo Ranch** Company made a beneficial use of the waters about as early as plaintiff's predecessor, and that all of the defendants made such use openly, notoriously, and adversely to all the world after the irrigation district had ceased to function, in the manner and for the period stated. With reference to defendant Pallett, it appears that about two years after the irrigation district originally began to operate, it brought an action against one Shoemaker, Pallett's predecessor in interest, to determine the respective rights of the parties in the water of the stream, and that judgment was had determining these rights. It also appears, however, that after the year 1895, and during the period when the district had ceased to function as such, the judgment was no longer observed either by Shoemaker or Pallett, but, on the contrary, use of the water to the full extent of the ditch used by them was made adversely to the judgment, and such use was never questioned by any one until the commencement of this action. The judgment between the district and Shoemaker, therefore, cannot be held to be res adjudicata as to Pallett or affect any rights he or Shoemaker acquired subsequent to its rendition. There is, therefore no merit in the contention that the evidence is insufficient to show that the various defendants have made use of the waters adverse to plaintiff's claim herein.

[5] [6] [7] [8] [9] [10] [11] [12] [13] In general it may be said that a permanent right to the use of the water or a water right may be acquired in the Western states by one who has complied with the essential elements for the statutory period which constitute the adverse user of the water amounting to prescription. This right may be acquired as against one who formerly claimed the water by virtue of a prior appropriation, as a riparian owner, as a purchaser, or as against one who originally claimed the right to the water by prescription itself, or as against one who had acquired the right to the water by any other method. It follows that the rights of an appropriator may be lost in whole or in part by the adverse possession and the user of the water by another amounting to prescription. Where one has complied with all the essentials ***274** necessary, and has had the continued, open, notorious, exclusive, uninterrupted, and adverse use and enjoyment of the water under a claim of right for at least the period of time prescribed by the statute of the state where the right is claimed for the commencement of actions for recovery of real property, the law will presume a grant of the right so held and enjoyed. A private corporation holding water as a public use can thus lose its right by prescription, and the rule applies to public utility corporations holding title to property as a public use. A distinction is sought to be drawn by appellant between the ordinary public utility corporation and an irrigation district, it being claimed that as to the latter the property of the district is held by it in trust for the public and subject to the control of the state, and, this being so, it cannot be deprived of its right either by adverse possession, laches, estoppel, or abandonment. In support of this claimed distinction we are cited to numerous authorities to the effect that there can be no adverse holding of lands set apart or reserved to public use which will deprive the public of the right thereto or give title to the adverse claimant or create a title by virtue of the statute of limitations. These cases are extensively cited and reviewed in People v. Kerber, 152 Cal. 731, 93 P. 878, 125 Am. St. Rep. 93. There can be no question that where public lands have been devoted to a public use, persons cannot obtain title thereto by prescription founded on an adverse occupancy. This principle is indisputable and is not here disputed. It has no application, however, to the instant case. The title or interest that one may acquire in the waters of a stream is entirely different to that which may be

acquired in lands. Running water, so long as it continues to flow in its natural course, is not and cannot be the subject of a private ownership. A right may be acquired to its use, but this right carries with it no specific property in the corpus of the water itself. One availing himself of the use of such waters has simply the right of usufruct as it passes down the bed of the stream, subject to a reasonable use and consumption for domestic and other purposes. This interest is dependent upon user, and it may be lost when the owner ceases to make avail of the same. Civ. Code, § 1411; ***275** Santa Paula Waterworks v. Peralta, 113 Cal. 38, 45 P. 168. This rule has been applied against a public service corporation, and there is no reason in principle why it should not equally apply against an irrigation district. Both are created to serve the public. Whatever differences may exist between them with reference to the method of their organization of their rights, duties, and liabilities, their purposes are the same. In the case of a public use the beneficiaries do not possess rights to the water which are in the ordinary sense private property. ****268** Leavitt v. Lassen Irr. Co., 157 Cal. 82, 106 P. 404, 29 L. R. A. (N. S.) 213;Hildreth v. Montecito Creek W. Co., 139 Cal. 22, 72 P. 395. Those holding possession thereof in trust for the beneficiaries cannot continue to hold it as a public use where they have discontinued to perform their public duty which such possession and control imposes. Fellows v. City of Los Angeles, 151 Cal. 52, 90 P. 187.

Our Supreme Court, in dealing with this subject, has said that there is no rule of law which prevents a person who owns land riparian to a stream above a place of diversion of water therefrom by some other person, even a public service corporation for public use, from taking water from the stream and acquiring title thereto by prescription as against such public use. That a public service corporation is no more exempt from this deprivation than any other owner of a water right, and any person, although not a riparian owner, may acquire a prescriptive right as against a public use below by taking water out of the stream which otherwise would run down to the channels of the public service corporation. San Joaquin & Kings River Canal & Irrigation Co. v. Worswick, 187 Cal. 674, 203 P. 999.

[14] As is pointed out in Escondido Mutual Water Co. v. Escondido, 169 Cal. 772, 147 P. 1172, it is to be borne in mind that it is only the use of water which is a public use, and, while it is true that whenever any water has been so devoted to a public use the public and each individual thereof as a part of the public has a right to the continued use of that water, still the use impressed may be lost by abandonment. It would be a most mischievous perpetuity which would allow one who has made an appropriation of a stream to retain indefinitely as against other appropriators of the right to water therein while failing to apply the same ***276** to some useful or beneficial purpose. Smith v. Hawkins, 110 Cal. 127, 42 P. 453. Considering the imperative demand of the use of water, the purveyors of the use, whatever the character of their holding may be, must make avail of the waters or the interest will be lost. The rule applies to all persons alike. It is the use of the water merely to which they may acquire an interest and not to the water itself.

[15] The further claim is made that, assuming the defendants had acquired some water by prescription, they could only acquire the right to so much of the water as was "reasonably necessary" for the lands actually irrigated, and that the evidence shows the amount of waters awarded to them was unnecessary to properly irrigate their lands. There is no question that an acquired right in waters is limited to the amount that is reasonably necessary for the beneficial purpose for which it is diverted, and no title can be acquired to that part of a diversion which is excessive of such needs. In so far as the diversion exceeds such reasonably necessary amount it is contrary to the policy of the law, and is a taking without right and can confer no title no matter for how long continued, it being the policy of this state to require the highest and greatest possible

benefit from the waters in the interest of agriculture and other useful and beneficial purposes. Cal. Pastoral, etc., Co. v. Madera Irr. Co., 167 Cal. 78, 138 P. 718.

Upon the subject of what amount was reasonably necessary for the use of the various defendants, there is a decided conflict in the evidence. It appears, however, that the lands in question are porous and gravelly and absorb water very rapidly, in consequence of which it is necessary to distribute large quantities over the surface of the ground so that the roots of the plants can be properly nourished. It also appears that by reason of the porous character of the soil a large percentage of the water makes its way by a subsurface flow back to the creek to the benefit of the lower owners.

There is ample evidence in the record to support the findings as to the amount of water reasonably necessary for the full enjoyment of the beneficial use made by defendants under their three classes of water rights which were put in issue under the pleadings.

***277** Considering our conclusion upon this subject, the question of estoppel and laches raised by respondent becomes unimportant.

The judgment is affirmed.

We concur: KNIGHT, J.; CASHIN, J.