

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

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IN THE MATTER OF THE APPLICATION OF A. S. SPAULDING
TO APPROPRIATE FROM THE WEST BRANCH OF RATHBUN CREEK
TRIBUTARY OF BIG BEAR LAKE IN SAN BERNARDINO COUNTY,
CALIFORNIA, FOR DOMESTIC PURPOSES

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DECISION NO. 3728 D 74

Decided October 2, 1925

APPEARANCES AT HEARING HELD December 17, 1924

For Applicant Swing & Wilson, by Ralph E. Swing and Perry Hicks

For Protestant, Bear Valley Mutual Water Co. --No appearance

Examiner Edward Hyatt, Jr., Chief of Division of Water Rights,
Department of Public Works, State of California.

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O P I N I O N

This application is for the appropriation of water from the west Branch of Rathbun Creek, tributary of Big Bear Lake in San Bernardino County. It proposes an appropriation of two cubic feet per second of direct diversion throughout the year for domestic purposes.

This application was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights, and being protested was set for public hearing at Room 818 Pacific Finance Building, Los Angeles, on December 17, 1924, at 10:00 o'clock a.m. Of this hearing applicant and protestant were duly notified.

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The only protest against the application was filed on August 1, 1924, by the Bear Valley Mutual Water Company. The protestant Company allege that the water of the West Branch of Rathbun Creek is tributary to Big Bear Lake from which their supply is taken and that the flow has been into the Lake practically without interruption since 1884, and therefore that there can be no water in the stream subject to appropriation, that ever since 1884 the water impounded in the Lake has been put to beneficial use and will so be used in the future.

The applicant filed a reply to this protest with the Division on December 15, 1924, claiming that all of the waters of the West Branch of Rathbun Creek have been used upon the lands named in the application for the last ten years, that the water is appurtenant to the said land, and that the water flows into Bear Lake during the winter season only and during times of great storms; that in normal times and during all of the summer period none of the surface water of the stream reaches Bear Lake and that the proposed diversion will not interfere with the right of protestant.

At the hearing, the applicant's representative stated that it was proposed under the application to use the water which had heretofore been used for stock watering and irrigation purposes, for domestic use on 10,000 to 12,000 lots into which the previous place of use will be subdivided.

Evidence was presented by the applicant to prove that the use of the water from the proposed source of diversion had been continuous since 1897 or 1898 for stock watering and irrigation purposes on the property which had later been transferred to the applicant and that since 1913 any water which found its way to Bear Lake was waste or seepage water only.

It was explained to the applicant that as the application was for a new use the priority of the same would be as of the date of the filing.

At the request of the applicant the period of use named in the application was amended to "from April 1st to December 1st of each season", thereby releasing the water during the remaining months for storage projects. It does not appear from the evidence presented at the hearing that the protestants' rights would be interfered with by the proposed diversion inasmuch as the same amount of water has been used heretofore by the applicant for other purposes and therefore the proposed diversion would not deprive the protestant company of water that it had been using in the past.

Furthermore, as the protestant Company did not appear at the hearing and submit evidence in confirmation of its allegation it has failed to support the burden of proof appropriate to a moving party.

It therefore appears that there is unappropriated water in the course named subject to appropriation.

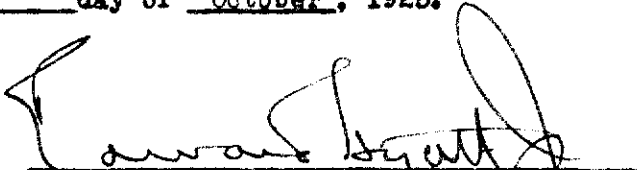
ORDER

Application Number 3728 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, a protest having been filed, a public hearing having been held and the Division of Water Rights now being fully informed in the premises

IT IS HEREBY ORDERED that the said application Number 3728 as amended be approved and permit be issued subject to the usual terms and conditions.

Dated this second day of October, 1925.

WES:MP



CHIEF OF DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA