

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

oOo

In the Matter of the Petition to Change the Place of Use Under Permit 955 Heretofore Issued Upon Application 2045 of William J. Rogers Allowing the Appropriation of 0.15 cubic foot per second from an Unnamed Spring in Los Angeles County for Irrigation and Domestic Purposes and in the Matter of Application 4724 of William J. Rogers to appropriate from an Unnamed Spring in Los Angeles County for Domestic and Garage Purposes.

oOo

DECISION A. 2045, 4724 D 181
Decided January 23, 1928.

APPEARANCES AT HEARING HELD September 14, 1927

For Applicant:

William J. Rogers

No Appearance

For Protestants:

Walter B. and Walter W. Balphs,
administrators of the Estate of
O. N. Balphs, deceased

In propria persona

Josephine Hunter Caswell

Robert M. Pease

EXAMINER: Everett N. Bryan, Deputy Chief for Edward Hyatt, Jr., Chief of Division of Water Rights, Department of Public Works, State of California.

oOo

O P I N I O N

On December 27, 1921, permit 955 was issued in approval of Application 2045 allowing the permittee to appropriate 0.15 cubic foot per second from a spring in Los Angeles County for irrigation purposes from about April 1st to about October 1st of each season and throughout the remainder of the year as required for domestic purposes.

Under the terms of the permit actual construction work was to have begun on or before April 1, 1922 and was thereafter to be prosecuted with reasonable diligence and completed on or before April 1, 1923. Complete application of the water to the proposed use was to have been made on or before April 1, 1924.

Protestants Ralphs and Caswell appealed the action of this office in approving the application on the following grounds:

1. The right to the use of waters involved was the property of appellant Ralphs.
2. The waters involved were not subject to use on non-riparian lands.
3. The permit constituted a violation of ownership and rights and would cause litigation notwithstanding the clause "subject to vested rights".

A board of review consisting of W. F. McClure, B. A. Etcheverry and Eugene L. Grunsky approved the order of the Chief of the Division of Water Rights on September 16, 1922.

The progress report for the year 1922, filed in this office January 29th 1923, indicated that with the exception of the preparation of some land for irrigation nothing had been done on the project due to the fact that the permittee had failed to acquire right of way through the Ralphs' property.

The 1923 progress report filed January 12, 1924 stated that no work had been done, but according to a letter which accompanied the report permittee was negotiating for the purchase of the property upon which the proposed diversion was to be made.

On January 23, 1924 an extension of time until July 1, 1925 was allowed by this office within which to complete construction work and use of water under the permit.

On January 16, 1925 permittee informed this office that a "pond" at the spring had been constructed and that "quite a lot of money" had been expended, although the necessary right of way had not yet been procured. He asked that he be allowed to change his place of use to Section 16, which he claimed to own and stated that a pump would be installed at the spring by which the water could be lifted to such a height as would enable him to obtain a gravity flow to his hotel and garage. The notice of the proposed change was prepared and duly advertised.

The petition to change the place of use under Application 2045, Permit 955 was protested by Josephine Hunter Caswell.

The protest was directed more particularly against the application in its original form and the attention of this office was directed to the fact that the permittee appears to have done nothing in the way of bona fide appropriation, the only work done being the construction of a shallow earthen reservoir and that no water had been diverted or appropriated under the permit. Protestant suggested that Permit 955 be revoked.

On July 16, 1925, an inspection of the project was made by an engineer of this office who reported that at a point about 300 feet below the spring the permittee had constructed an earthen reservoir but that no pipe line had been constructed and no use of water had been made. At the time of the inspection applicant informed the engineer that upon approval of his petition to change the place of use he would complete the reservoir and construct a pipe line through which water would be conveyed to a hotel and garage which he contemplated building along the highway in the vicinity of Quail Lake.

Although Application 2045 was approved for domestic use throughout the year the application itself named the period from April 1st to

October 1st only and it was suggested to Mr. Rogers that in order to fully protect his interests another application should be filed to cover the period from October 1st to April 1st of each season.

In conformity with this suggestion Application 4724 was filed on August 7, 1925. The application proposes an appropriation of 0.15 cubic feet per second from the same source as described in Application 2045 to be diverted from October 1st to April 1st of each season and to be used for domestic and garage purposes. It was protested by Walter B. and Walter W. Ralphs, administrators of the Estate of O. N. Ralphs deceased, and by Josephine Hunter Caswell. The application was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Rights and being protested was set for a public hearing along with the matter of the petition to change the place of use under Application 2045, Permit 955 at Room 1026 Sun Finance Bldg., Los Angeles at 2:00 o'clock P.M. on September 14, 1927. Of this hearing applicant and protestants were duly notified.

Application 2045, Permit 955 and Application 4724 really constitute a single enterprise to divert 0.15 cubic feet throughout the entire year for domestic and garage purposes.

Unrefuted testimony presented at the hearing held September 14th indicated that the project had been abandoned. No appearance was made on behalf of the applicant and in order to give him opportunity to show cause why Application 2045, Permit 955 should not be revoked for non-compliance with the terms of the permit another hearing was held at Sacramento on the 5th day of December 1927 at 10:00 o'clock A.M. No appearance was made on behalf of the permittee in this matter and on December 17, 1927 the permit was revoked.

Since Application 2045, Permit 955 has been revoked no object can be served by granting a petition to change the place of use thereunder and

the petition may therefore be dismissed. As to Application 4724 the evidence is that the project covered thereby is abandoned and therefore the application may be rejected.

O R D E R

A permit having heretofore been issued in approval of Application 2045 which allowed time within which to complete construction work and use therein proposed, a petition having been filed for the purpose of changing the place of use under said permit and Application 4724 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, a public hearing having been held, at which it appeared that the projects under said Application 2045 and 4724 had been abandoned and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that the petition for change in place of use under said Application 2045, Permit 955 be dismissed, and

IT IS FURTHER ORDERED that Application 4724 be rejected and cancelled upon the records of this office.

Dated at Sacramento, California, this 23rd day of January,
1928.

(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

WES:MP