

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

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In the Matter of Application 5547 of Peters-Rhoades  
Company, Inc., to Appropriate from Seven Springs  
in Kagel Canyon and One Spring in Lopez Can-  
yon, Tributaries of Tujunga Wash and San  
Fernando Valley in Los Angeles County  
for Domestic Purposes.

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DECISION A. 5547 D-220

Decided 3/14/29 oOo

APPEARANCES AT HEARING HELD AUGUST 22, 1928.

For Applicant:

Peters-Rhoades Company, Inc.

D. L. Peters  
G. A. Bray

For Protestants:

J. A. Jaynes  
E. H. Keith  
Charles S. Sherman, et al  
City of Los Angeles

E. A. Girvin  
in propria persona  
E. H. Keith  
No appearance

EXAMINER: Everett N. Bryan, Deputy Chief for Harold Conkling, Chief of  
Division of Water Rights, Department of Public Works, State  
of California.

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O P I N I O N

GENERAL FEATURES OF APPLICATION

Application 5547 was filed with the Division of Water Rights on June  
27, 1927, by Peters-Rhoades Company, Inc. As presented at the hearing it pro-  
posed an appropriation of 0.525 cubic foot per second of which amount 0.35  
cubic foot per second was to be diverted from seven springs in Kagel Canyon  
and 0.175 cubic foot per second was to be diverted from a spring in Lopez  
Canyon. The water was to be used for domestic purposes on 471 lots in the  
SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 29 and on 396 lots in the NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 29,

T 3 N, R 14 W, S.B.B. & M., and for the irrigation of 12 acres of land lying within the said NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 29.

On being advised at the hearing that domestic use also covered incidental garden irrigation the applicant requested that the application be amended to cover domestic use and the request has been complied with.

The application was protested by the City of Los Angeles, J. A. Jaynes, E. H. Keith and Charles S. Sherman, et al, but the protest of Charles S. Sherman, et al was withdrawn at the hearing, it being understood that the use of the water should be confined strictly to domestic purposes.

#### PROTESTS

The City of Los Angeles alleges in effect that the proposed diversion from springs in Kagel and Lopez Canyons would result in causing a diminution of the waters of the Los Angeles River to which the City has a paramount right.

Mr. J. A. Jaynes claims a right to the use of water from two springs in Lopez Canyon which right was acquired prior to the Water Commission Act. He alleges in effect that one of these springs is the source from which the applicant proposes to divert and that if the application were approved the diversion would seriously interfere with his prior vested rights.

Mr. E. H. Keith has a mining claim which is located in the NE $\frac{1}{4}$  of Section 29, T 3 N, R 14 W, S.B.B. & M. upon which one of the springs from which applicant proposes to divert is located. He alleges in effect that any diversion from this spring by the applicant would deprive him of water necessary for his development work and that applicant proposes to divert the water to a subdivision where there is no one to use it.

Charles S. Sherman, Ferdinand Heim, Anna Heim, Lillian B. Weeks and Henry Schwakopf allege that the approval of the application would re-

sult in depriving them of water for domestic and fire protection purposes.

APPLICATION IN DUE FORM

Application 5547 was completed sufficiently for advertising 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 a public hearing in accordance with Section 1a of the Water Commission Act on August 22, 1928, at 2:00 o'clock P.M. in Room 1026 Associated Realty Building, Los Angeles, California. Of this hearing applicants and protestants were duly notified.

DESCRIPTION OF SOURCES FROM WHICH APPLICANT  
PROPOSES TO DIVERT

Lopez Canyon in which one of the springs from which applicant seeks to divert is located on the southern slope of the San Gabriel Mountains and heads at a point about 0.3 of a mile north of the northeast corner of Section 30, T 3 N, R 14 W, S.B.B. & M. at an elevation of about 3200 feet. It takes a general southwesterly course for a distance of approximately three miles to the point where it debouches into the San Fernando Valley at an elevation of approximately 1200 feet. The spring from which applicant would divert is located near the head of the canyon at a point near the northeast corner of Section 30 at an elevation of about 2600 feet. The drainage area above the spring does not exceed twenty-five or thirty acres. In the immediate vicinity of the spring the canyon is rather steep with high walls.

The other springs from which the applicant seeks to appropriate are located in Kagel Canyon or rather the East Fork of Kagel Canyon. This canyon is also located on the southern slope of the San Gabriel Mountains and heads at a point near the center of Section 20, T 3 N, R 14 W, S.B.B. & M. at an elevation of approximately 3200 feet. It takes a general southerly and southeasterly course for a distance of about two miles to its junction

with the main Kagel Canyon, and thence takes a general southerly course for a distance of about a mile to the point where it debouches into the Tujunga Wash at an elevation of about 1200 feet. It is tributary to Tujunga Wash at a point just below the junction of Little Tujunga Canyon with Tujunga Wash. The lowest of the seven springs from which applicant seeks to divert is located in the East Fork of Kagel Canyon about one mile south of the head of the canyon and above this spring there is a drainage area of approximately 110 acres.

#### DISCUSSION OF PROTESTS

As stated above the protest of Charles S. Sherman, et al was withdrawn with the understanding that the application would involve domestic use only.

The protest of Mr. Jaynes is directed at the proposed diversion from the spring in Lopez Canyon only and is based on alleged interference with his irrigation and domestic supply which is obtained from two springs in Lopez Canyon located within 150 feet from the spring or seep from which the applicant seeks to divert.

Testimony presented at the hearing indicated that on September 25, 1906 and March 25, 1913, appropriative rights were initiated by Mr. Jaynes to divert from a spring and running water in Lopez Canyon, that since the appropriative right was initiated Mr. Jaynes has proceeded with reasonable diligence to develop the entire flow of the canyon above his lower point of diversion. Although the original filing was for 10 miners inches of water, it appears that less than 1 miners inch has been developed although every reasonable effort has been made by protestant to increase the amount. This water is and has been used by protestant for domestic purposes in six cabins and one more pretentious dwelling of eleven rooms with two sinks and toilets,

and there is also a building which is used for a shower bath and toilet. There are thirteen buildings on his property, eight of which are inhabited. The protestant rents the cottages, especially during the summer months for resort purposes and there are frequently 25 or 30 people using the water at one time and as many as 75 people have been there in one day. In addition to the domestic use water is used for the irrigation of a flower garden, vegetable garden and about seventy-five fruit trees.

It appears that protestant has been on the place constantly for the last five years and prior to that in the summer time ever since the appropriative right was initiated and has endeavored each year to develop more water.

Protestant has constructed a small basin just below the springs which extends to bed rock and has been walled with rock and puddled with clay to make it as water tight as possible. This basin collects all the water which can reasonably be developed above this point and from this basin the water is conducted by a pipe line to a small regulating reservoir whence it is distributed to the place of use. Testimony presented at the hearing indicated that there was no surface flow which passed protestant's intake although the ground for a distance of perhaps twenty feet was somewhat moistened from seepage.

It appears that the protestant has developed all the water which it is practical to develop and that at least about one-third of the protestant's supply is obtained from applicant's proposed point of diversion and that if the proposed appropriation were allowed it would result in depriving protestant of at least a portion if not all of his present supply.

It is the opinion of this office therefore that the protest of Mr. Jaynes is a legitimate one and that this application, insofar as it relates to appropriation from Lopez Canyon should be denied.

Although the City of Los Angeles was not represented at the hearing in connection with Application 5547 its attitude, expressed at other hearings on similar proposed projects, is to the effect that while the amounts of water which it is proposed to appropriate are small the total amount of water which it is proposed to divert together with that which may be sought by similar applications in the future, will amount to a considerable quantity; that although it is very difficult to trace the course of such a small quantity of water from some point on the watershed tributary to the Tujunga, nevertheless if these small amounts are appropriated by others it would result in a diminution of the supply which eventually finds its way to the Los Angeles River.

As stated in the discussion of the protest of Mr. J. A. Jaynes, it appears that all of the water from the springs in Lopez Canyon above his lower point of diversion has already been appropriated by him and there is no water passing the said lower point of diversion over and above the amount which would reasonably be expected to escape.

Relative to the springs in Kagel Canyon no testimony was presented by either applicant or protestant at the hearing but from our general knowledge of the matter as acquired from hearings held on similar projects it would be reasonable to assume that the sources of supply are small springs, the waters of which if not appropriated would flow a short distance only and sink into the gravels of the stream bed. The springs are located about thirteen to fourteen miles from the nearest point of diversion of the City of Los Angeles and it is probable that a large portion of the water which sinks into the ground would never reach the City's point of diversion on account of evaporation and transpiration losses. The water from these sources which is not lost by evaporation and transpiration would no doubt travel so slowly through the ground that the ground waters would be replenished by precipitation before reaching the City's intake.

The only loss by reason of the use proposed so far as the City is concerned is because of increased evaporation and transpiration. However the mere fact that a certain amount of water is taken from the faucets does not mean that the water is lost to downstream users. It is believed that the increase in loss of these particular waters by reason of the proposed appropriation would be negligible.

The protest of the City of Los Angeles may therefore be dismissed.

The protest of Mr. Keith is directed at the proposed diversion from one of the springs in Kagel Canyon which is located on his mining claim.

No evidence was submitted at the hearing in support of his alleged injury as he left the hearing prior to the conclusion thereof, except that it was generally conceded that his right to the claim was initiated prior to the filing of Application 5547.

Subsequent to the hearing this office was advised by the Supervisor of the Angeles National Forest that the district ranger had made an examination of the Ocean View Mining Claim in Section 29, T 3 N, R 14 W, and according to his report Mr. Keith was technically complying with the mining law having performed considerable assessment work. The ranger stated however that should the claimant attempt to secure patent to the land the Forest Service would protest the passing of title on the grounds of "No discovery of valuable mineral" and "Location under the Mineral Laws is a pretext for securing valuable residence sites".

The ranger further reported that the spring in question rises on the Ocean View Mining claim which immediately adjoins a subdivision of the Peters-Rhoades Company. This spring was developed some years ago by the original owners of the patented lands now owned by the Peters-Rhoades Company. Portions of the old pipe line are still present and there is evidence of some

recent work, probably an hours work with a shovel and wheelbarrow. The old tunnel had fallen in and the only outward sign of the spring is a small seep extending a few feet on the surface of the ground. It was the opinion of the District Ranger that if, as he claims, Mr. Keith does use water from the spring in connection with his mining claim it would probably be for filling his canteen as he passes by to his tunnel which is on the same trail and at a higher elevation.

As the spring is located on Mr. Keith's mining claim it would be necessary for the applicant to take such steps as may be necessary to acquire the right of access before he would be in a position to divert any water therefrom.

It is contrary to the policy of this office to approve an application or any portion of an application when there is any doubt whatsoever as to applicant's ability to secure right of access and in this particular instance while there would appear to be unappropriated water in Mr. Keith's spring, action on this particular phase of the project should be withheld for a reasonable time pending the acquisition by applicant of the right of access. If right of access is obtained within a reasonable time the application should be approved in so far as it relates to the proposed diversion from the spring located on the Ocean View mining claim. If right of access can not be secured within a reasonable period of time then the privilege of diverting from this particular spring should be denied.

As to the other springs which are located in Kagel Canyon, no testimony was presented at the hearing to indicate that there was no unappropriated water in these sources and the application should therefore be approved insofar as these springs are involved.



CONCLUSION

As it appears that the waters from the spring in Lopez Canyon which the applicant seeks to divert have already been appropriated by Mr. Jaynes and are being used for a useful and beneficial purpose, Application 5547 should be denied insofar as it relates to the spring in Lopez Canyon.

As there appears to be unappropriated water in the proposed sources of diversion in Kagel Canyon and the purpose to which the applicant proposes to put the water is a useful and beneficial one the application should be approved insofar as it relates to the springs in Kagel Canyon other than the spring located on the Ocean View mining claim of Mr. Keith and action should be withheld on the application insofar as it relates to this spring for a reasonable period in order to afford applicant the opportunity to acquire the necessary right of access.

Kagel Canyon and Lopez Canyon have been incorrectly described in the application as being tributary to Little Tujunga Canyon. The application therefore should be amended to indicate that Lopez Canyon is tributary to the San Fernando Valley and that Kagel Canyon is tributary to Tujunga Wash.

ORDER

Application 5547 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a public hearing having been held, and the Division of Water Rights now being fully advised in the premises:

IT IS HEREBY ORDERED that Application 5547 insofar as it relates to the appropriation of water from that certain spring in Lopez Canyon be rejected and cancelled upon the records of this office, and

IT IS FURTHER ORDERED that Application 5547 insofar as it relates to the appropriation of water from springs in Kagel Canyon other than that certain spring which is located on the Ocean View mining claim of Mr. Keith be approved and a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate, and

IT IS FURTHER ORDERED that, provided within a reasonable time applicant demonstrates its ability to secure necessary right of access to that certain spring located on the Ocean View mining claim of Mr. Keith, permit be amended to include the right to divert therefrom and if such ability to secure right of access is not demonstrated within a reasonable period of time, the right to divert from said spring be denied.

DATED at Sacramento, California, this 14<sup>th</sup> day of March 1929.

Harold Conkling  
(Harold Conkling)  
CHIEF OF DIVISION OF WATER RIGHTS

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