

Decision file

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

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In the matter of Applications No. 2367 and 2673 by Henry Barkschat and John A. Barrington, respectively to appropriate water from unnamed springs in Los Angeles County for agricultural, domestic and irrigation purposes respectively.

DECISION No. A2367-2673 D 49
Decided March 30, 1925.

APPEARANCES AT HEARING HELD DECEMBER 17, 1923

For Applicants: Clarence R. Naff, Atty., for Henry Barkschat. Geo. E. Waldo of Waldo and Hinds, Attorneys for John A. Barrington

For Protestants: Walter Pedersen, in propria persona, Mr. Naff for Mr. Barkschat. Mr. Waldo for Mr. Barrington

Examiner: Donald M. Baker, Hydraulic Engineer, Division of Water Rights

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OPINION

On June 2, 1921, Henry Barkschat filed his application No. 2367 to appropriate three cubic feet per second of unappropriated water of the State of California, which application was later amended to specify the appropriation of 0.29 cubic foot per second as a total from seven springs located in the S.E. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ and the S.W. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ of Section 31, T 6 N, R 13 W, S. B. M. and the N.E. $\frac{1}{4}$ of Section 1, T 5 N, R 14 W. S. B. M. for agricultural purposes.

On December 5, 1921, John A. Barrington filed his application No. 2673, also to appropriate unappropriated water in the State of California for irrigation purposes, the total amount specified being 0.50 cubic foot per second and the sources being five springs also in the S.E. $\frac{1}{4}$ of the S.E. $\frac{1}{4}$ of Sec. 31, T 6 N, R 13 W. S. B. M.

Application 2367 by Mr. Barkshat has been completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations but the locations of the springs specified in Mr. Barrington's application No. 2673 have not yet been satisfactorily submitted. Both applications were advertised, and being protested were set for a public hearing at Room 818 Pacific Finance Building, Los Angeles at 10:00 o'clock A. M., December 17, 1923. Of this hearing applicants and protestants were duly notified. Each applicant appeared at this hearing in the dual capacity of applicant and protestant. The only other protestant appearing at the hearing was Walter Pedersen.

The contention raised by other protestants to these applications except the applicants themselves is to the effect that the diversion of water from the springs specified would have an adverse effect on their claimed rights to use water which they secure from wells some distance down the canyon from the springs. The testimony given by Walter Pedersen at the time of the hearing is ample to show that there is no connection between the water flowing from these springs and the water claimed by these record protestants. This evidence is to the effect that the bottoms of these wells are somewhat higher in elevation than the wash into which the springs naturally drain. It is, therefore, apparent that the only pro-

tests which may be considered in making a decision in the matter are those of Barkschat and Barrington.

Barrington alleges that he holds mining claims in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 31, upon which some of the springs filed on by Barkschat were located and that therefore Barkschat can not legally gain access to them. Barkschat possesses a special use permit from the U. S. Forest Service for a right of way for a pipe line across these claims, and asserts that the claims are invalid as they do not comply with the mineral laws in having any mineral upon them.

Barkschat alleges that the springs filed on by Barrington feed the wells upon his land which lie south of them, and that diversion as proposed by Barrington will result in a loss of water in his wells and in the Creek which they feed and which flows through his land. Although Barrington denies this allegation, Barkschat's testimony on this point stands uncontroverted.

By stipulation it was agreed between the applicants that within 30 days a map should be prepared by a licensed surveyor which should establish the adjacent section corners, the location of the draw leading from the springs and the relative positions of the springs filed upon by the two applicants. Subsequently pursuant to this stipulation a map was submitted by Clarence P. Day at the request of these applicants which depicted four springs in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, the draws, and adjacent section corners but failed either to give bearing and distance from the section corner to these springs or to show whether they were the springs claimed by Mr. Barkschat or the springs claimed by Mr. Barrington.

At a later date Mr. Barkschat showed ties upon a copy of this map to these four springs, to a fifth spring which he depicted in the same forty acre tract to a sixth spring in the SW $\frac{1}{2}$ SE $\frac{1}{4}$ of the same section and to a seventh spring in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 1 T 5 N, R 14 W, thereby definitely locating the seven springs described in his application.

Mr. Barrington was requested to furnish similar ties to the five springs claimed by him but has failed to do so.

Barrington claims that there exists gravel suitable for concrete purposes and also clay upon the mining claims located by him in the SE $\frac{1}{2}$ SE $\frac{1}{4}$ Section 31. While this was not successfully refuted at the hearing, information received from the U. S. Forest Service indicates that the formation on Barrington's grazing homestead, which lies adjacent to his mining claim, is of the same character, and that the formation is a schist, with a covering of schist soil "which is neither clay nor gravel".

No mining work has been carried on by Barrington outside of digging a few open cuts, and no use of water has been made on the claims. Barrington states that he intends to use the water on his claims for mining purposes and development of hydromechanical power in connection therewith, and then upon the lands given in his application for irrigation and domestic use.

It would appear that both applicants have right of access to the points of diversion, Barrington under his mining location and Barkschat under his special use permit from the U. S. Forest Service. Since the Division of Water Rights lacks jurisdiction on this phase of the matter determination thereof should be sought by the respective parties through the proper channels.

The question before the Division of Water Rights is therefore limited to the existence or otherwise of unappropriated water. Insofar as the riparian claim of Mr. Harrington is concerned no beneficial use for mining has been made of the water as yet, nor has any showing been made of any other use under riparian claim of water from these springs. It, therefore, appears the first right to the water is that initiated by Barkschats application.

Barkschat's plans contemplate the appropriation of all the available water in the springs specified by him and if Barrington's application is to appropriate from the same springs there is, accordingly no water therefrom subject to his appropriation. If, on the other hand, Barrington's springs are differently located from Barkschat's he may be able to secure water therefrom which is not covered by Barkschat's application, but subject to the Barkschat's rights.

In view of possible conflict in these two developments strict diligence should be required in compliance with the terms of the permit to Barkschat.

ORDER


Applications Nos. 2367 and 2673 having been regularly filed with the Division of Water Rights, protests having been filed, a public hearing having been held and the Division of Water Rights being now fully informed in the matters:

IT IS HEREBY ORDERED that application No. 2367 be approved and a permit issued thereon subject to such of the usual terms and conditions as may be appropriate.

IT IS FURTHER ORDERED that in accordance with the provisions of

Section 17 of the Water Commission Act, Mr. Barrington be allowed sixty days within which to file an amended and perfected application and map accurately describing the location of the several springs referred to in Application No. 2673 by bearing and distance to the northeast corner of Section 1 Township 5 North, Range 14 West, S. B. and M. as located under stipulation by Clarence P. Day; that if such amended and perfected application and map be not filed that then Application No. 2673 be cancelled; and that if such amended and perfected application and map be filed then a permit subject to such of the usual terms and conditions as may be appropriate be issued to Mr. Barrington allowing appropriations from such of the springs described in said Application No. 2673 as are not already covered by the permit issued to Mr. Barkschat under Application No. 2367.

Dated at Sacramento this thirtieth day of March 1925.



Chief of Division of Water Rights
Department of Public Works
State of California.