

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

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IN THE MATTER OF APPLICATION NUMBER 3775 OF EDWARD NEWTON  
TO APPROPRIATE WATER FROM A BRANCH OF SEELEY CREEK AND A  
BRANCH OF NORTH CREEK, TRIBUTARIES OF SEELEY CREEK, AND  
NORTH CREEK IN SAN BERNARDINO COUNTY, CALIFORNIA, FOR  
DOMESTIC PURPOSES

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DECISION NO. 3775 D 51

Decided May 19, 1925

APPEARANCES AT HEARING HELD December 17, 1924

For Applicant - Edward Newton - in propria persona

For Protestant - So. Calif. Edison Co. - Geo. E. Trowbridge

For Protestant - John A. Mathis - Lloyd L. Miller

A. S. Spaulding and - Swing & Wilson and  
R. M. and R. L. Bartlett Percy Hicks

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

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O P I N I O N

This application as presented at the hearing was for the appropriation of water from branches of Metcalf Creek and North Creek which are tributary to Big Bear Lake in San Bernardino County. It proposed an appropriation of 0.25 cubic foot per second from the Branch of Metcalf Creek and 0.25 cubic foot per second from the Branch of North Creek from January 1st to December 31st of each season 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 protestants were duly notified.

The protest of Herbert H. Garstin for the Bear Valley Mutual Water Company was filed on August 30, 1924. Protestant alleges that there is no unappropriated water from either of these sources as it was all appropriated by the predecessors of the Company and used by them in 1884 and that the water so appropriated has been put to continuous beneficial use since that time, that the flow of Metcalf Creek is one of the few feeders during the summer months of the Company's reservoir and to have it interfered with would seriously injure them.

The protest of John H. Fisher was filed on September 15, 1924. Protestant alleges that he is the owner of the E $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 23; all of the SE $\frac{1}{4}$  of Section 23, T 2 N, R 1 W, S.B.B. & M. also part of the W $\frac{1}{2}$  of SW $\frac{1}{4}$  of Section 24; and a portion of the SW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 24 and a 74.3 acre tract in Section 24, T 2 N, R 1 W, S.B.B. & M. which is more particularly described. That the waters which the applicant proposes to divert are riparian to these lands and that all the waters of the natural streams from which the applicant proposes to divert are necessary for reasonable domestic use upon his lands; that no other water is available and consequently his lands will be greatly depreciated in value.

The protest of John A. Mathis was filed September 22, 1924. Protestant alleges that the point of diversion described in the application is not a branch of Metcalf Creek or a branch of North Creek, but is a branch of an unnamed stream of water which passes through protestant's property; that protestant's property is riparian to this stream, that the property described by the applicant as the place where the water is to be used is not riparian to the said source; that on April 14, 1923 protestant was granted a permit for 0.001 cubic foot per second from January 1st to December 31st of each season, and that such water has been put to beneficial use; that if the application be approved he will be unable to secure water for domestic purposes and his entire investment will be a loss.

Answers to the above protests were filed November 14, 1924.

The applicant alleges that it is his belief that the business of the Bear Valley Mutual Water Company is not to supply water for domestic purposes in Bear Valley itself, but is to supply water for irrigation purposes and that his application was to divert a small amount only for household purposes and to which he believes he is justly entitled.

In answer to the protest of John A. Mathis the applicant states that he is also riparian to the stream and that the stream produces and delivers a much greater surplus, even in dry seasons than can be taken care of by the protestant's diversion works and that it is this surplus for which he is applying and that he would be willing to abide by such equitable agreement if the application was approved.

In answer to the protest of Mr. J. H. Fisher the applicant states that the protestant's riparian lands have a very small and limited area which is adjacent to the mouth of these streams where they connect with the high water mark of the Lake and that during the summer months this small area of stream bed is invariably dry where these channels pass through the protestant's lands and that it is obvious that these waters which did not exist could not be utilized for subdivision purposes on the protestant's lands; that the protestant has been marketing these subdivisions for the past several years and at the present time more than half of the lots have been sold and residences have been erected on some of these sites, yet to the knowledge of the applicant no community water supply has been furnished at the protestant's expense for the benefit of these lot buyers at any time prior to the date of his application; that if the protestant is granted all of these waters the applicant's land would become worthless for the purpose for which he bought the land, namely for subdivisions; that the proposed diversion would not interrupt, nor diminish the waters on protestant's land because of the fact that there is little depth of soil to hold surface waters which rapidly drain off his land to the low level lands of the protestant below; that these surface waters which drain not only from his land but from higher Government land adjacent for miles in the rear provide the protestant with an abundant supply which has been drawn from by means of wells sunk at the expense of the purchasers of lots and therefore they are assured a supply at all times in the future.

The applicant has 160 acres of land which he intends to subdivide into about 487 cabin sites and place on the market in three units, the first unit to contain about 180 lots.

The applicant's attention was directed to the fact that the amount of water actually needed would probably not exceed 100,000 gallons a day and he requested that his application be amended to that amount, to be diverted from May 1st to November 1st of each year, and the application has been so amended, the amount of diversion from each source being kept in the same proportion as before, that is equal amounts to be diverted from each source.

It was also suggested that the amount of diversion be restricted to the amount which the applicant would actually put to beneficial use or approximately 37.2 acre feet per annum but since the terms of a permit expressly state that "the amount of water appropriated shall be limited to the amount which can be beneficially used" this further amendment is not considered necessary.

Mr. Newton stated that one of the sources named in the application as a branch of Metcalf Creek was in fact a branch of Seeley Creek and the same source upon which G. M. and R. L. Bartlett had filed under application Number 2526 and from which Mathis is now diverting under application Number 2331, permit Number 1374 and the application has been amended accordingly. This fact would appear to eliminate the main feature of the protest of the Bear Valley Mutual Water Company and as far as the other sources are concerned there is very little water which would find its way into Big Bear Lake during the time that it is proposed to use the same by the applicant.

Mathis and the Bartletts have priority to the waters of Seeley Creek and this priority must necessarily be respected by the applicant.

It is probable that the diversions made by the Bartletts and Mathis will be taken from the same cienega and they could cooperate with each other to their mutual advantage.

The protestant J. H. Fisher failed to appear at the hearing and no evidence was submitted to substantiate his allegation. The applicant claimed that Fisher does not use any of the water which he proposes to divert.

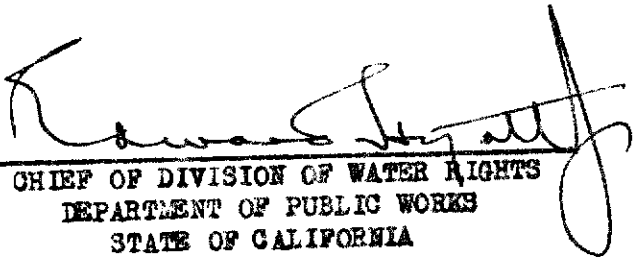
For all except about two months of the year there appears to be plenty of water for everybody and with a little regulation and conservation the water supply appears to be adequate to supply the applicant.

ORDER

Application Number 3775 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 informed in the premises.

IT IS HEREBY ORDERED that the said application Number 3775 as amended be approved and a permit issued subject to the usual terms and conditions.

Dated this nineteenth day of May, 1925.

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

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