

Decision

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

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IN THE MATTER OF APPLICATION NUMBER 2526 OF G. M. AND R. L.
BARTLETT TO APPROPRIATE FROM WEST FORK OF METCALF CREEK AND
CIENEGA AT HEAD OF SEELEY CREEK, TRIBUTARY TO BEAR LAKE IN
SAN BERNARDINO COUNTY, FOR DOMESTIC PURPOSES

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DECISION NO. 2526, D 53
Decided May 19, 1925

APPEARANCES AT HEARING HELD DECEMBER 17, 1924

For Applicants - G.M. & R.L. Bartlett,	Swing and Wilson, by Ralph E. Swing,
For Protestant - E. L. Blanchard,	Luther G. Brown
For Protestant - Bear Valley Mutual Water Co.	No appearance
For Protestant - Southern California Edison Co.	Geo. E. Trowbridge
For Protestant - C. A. Sanborn	No appearance
For Protestant - John A. Mathis	Lloyd L. Miller
For Protestant - Edward Newton	in propria persona
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 West Fork of Metcalf Creek, Talmadge Creek, and a ciensga at the head of Seeley Creek, all three sources being tributary to Big Bear Lake in San Bernardino County. It proposed an appropriation of one cubic foot per second from the west Fork of Metcalf

Creek, one cubic foot per second from Talmadge Creek and 0.22 cubic feet per second from the head of Seeley Creek, of direct diversion for domestic and agricultural purposes on 206 acres of land in Section 19, 24 and 25, T 2 N, R 1 W. S.B.B. & M. It was protested before the hearing by the Southern California Edison Company, the Bear Valley Mutual Water Company, C. A. Sanborn, and E. L. Blanchard.

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 A.M. Of this hearing applicant and protestant were duly notified.

The protest of the Southern California Edison Company was filed December 29, 1921. The protestant company alleges that the use of water as proposed would interfere with the operation of its power plants which require all of the flow of the Santa Ana River up to the capacity of the intakes of the plant to operate, inasmuch as the proposed points of diversion are located within the water shed of the Santa Ana River.

At the hearing, however, the applicants stated that it was their intention to use the waters from the sources named in the application for domestic use only, and the accompanying garden irrigation which is included therein, on 109 acres of land, which will be subdivided into small tracts and ultimately occupied by approximately 200 families

of not to exceed four or five people each and it was brought to the attention of the applicants that the quantity of water named in their application was far in excess of the amount that would actually be needed for this purpose.

In order to eliminate opposition to the project the applicants then requested that the application be amended by eliminating the use for agricultural purposes and that the total amount of water named in the application be reduced to 50,000 gallons per day to be diverted between May first and November first of each season; the place of use to be restricted to 109 acres in the NW $\frac{1}{4}$ of Section 25, and the application was amended accordingly.

The proposed amendments appear to clear up the protest of the Southern California Edison Company inasmuch as it was stated by its representative that it was the general policy of the company not to object to such diversions as might be necessary for domestic purposes and although the protest of the company was not formally withdrawn the company's representative stated that there would appear to be very little, if any, damage to them if the application was approved as amended.

It was suggested that the amount of diversion named in the application be limited to 18 acre feet inasmuch as that amount would appear to be the maximum amount that would be put to beneficial use in any one year, but since the clause in any permit issued specifically states that "the amount of water appropriated shall be limited to the amount which can be beneficially used", this further amendment is not necessary.

The protest of the Bear Valley Mutual Water Company was filed on April 15, 1922.

The protestant company claims that the proposed diversions would deprive them of water to which they are entitled by virtue of prior appropriation and that Metcalf and Talmadge Creek are among the few live streams that serve as surface feeders to Big Bear Lake and that the waters of these streams would be needed for their ^{Gilner} "Getner Point" subdivision.

The protest of C. H. Sanborn was filed July 7, 1922, and the protest of E. L. Blanchard on July 21, 1922.

Both of these protestants claim riparian rights and allege that the proposed diversion of the applicant would deprive them of water to which they are lawfully entitled as the water supply is not of sufficient quantity to admit of further diversion.

At the hearing it was suggested that some arrangement might be made between the Bear Valley Mutual Water Company and the applicant whereby the Bear Valley Mutual Water Company would take care of the right of Messrs. Blanchard and Sanborn, providing that the Bartletts withdraw the west Fork of Metcalf Creek from their application.

As the Bear Valley Mutual Water Company was not represented at the hearing, the matter was taken up later between the applicants and the company and at a meeting of the Board of Directors of the Bear Valley Mutual Water Company the president recommended that the Bartletts take the waters of Seeley and Talmadge Creeks and that the

Company take the waters of the West Fork of Metcalf Creek and Metcalf Creek with the understanding that Messrs. Sanborn and Blanchard would be taken care of by the Company, on consideration that the applicant amend his application to conform to this plan. This was agreed to by the applicant and the application was amended accordingly.

By this mutual agreement the protests of the Bear Valley Mutual Water Company and of Messrs. Sanborn and Blanchard are apparently eliminated.

On Seeley Creek, tributary to Big Bear Lake there is but one user, John A. Mathis.

Mr. Mathis has a permit from the Division for 650 gallons per day from an unknown creek or canyon (this creek being Seeley Creek) for domestic purposes, the water being regulated by a reservoir of 5,600 gallons capacity.

Mathis although not a record protestant appeared at the hearing and presented evidence as to his rights on Seeley Creek.

Mr. Mathis has first right to the waters of the Creek and these rights will have to be respected by any subsequent appropriators. Mr. Mathis was asked by the applicants' attorney during the hearing whether it would be agreeable to him if during such time as the applicants diverted from Seeley Creek, they would pipe down and connect with his pipe line and supply him with the quantity of water which he had been using. This proposal appeared to be agreeable to Mr. Mathis.

The applicant recognizes the right of Mr. Mathis to the quantity used by him under permit Number 1374 and realizes that any application which might be approved would be approved subject to prior vested rights.

Mr. Edward Newton appeared at the hearing and stated that in his application Number 3775 one of the sources was erroneously given as a branch of Metcalf Creek instead of Seeley Creek being the same stream upon which Mathis and the Bartletts had filed.

Newton's attorney claims that his application should be granted and that of the Bartletts denied for the reason that his application was made prior to December 19, 1924 and at the time of the filing his riparian right was not forfeited inasmuch as during the dry season of the year there was no water flowing in Seeley Creek across his land and that it could not be possible that a riparian right could be forfeited when there was no water flowing in the stream. That the Bartletts' proposed source of diversion is above that of Newton's land and consequently any permit granted should be subject to the right to have the water flow down to Newton, that no permit granted to the Bartletts should sanction the diversion by the applicant of water out of the watershed until lands within the watershed were supplied to the riparian lands of Newton and others.

It is not the function of the Division to determine what the riparian rights on this stream are, the hearing was held to determine whether or not there was unappropriated water in the sources named in the application. If Newton has riparian rights any permit granted would be subject to those rights.

The Bartlett application was filed prior to the Newton application and the rights initiated by the filing of the two applications are appropriative only and are in no way connected with riparian rights, as far as this office is concerned. Mathis apparently has the first right to water from Seeley Creek, the Bartletts have the next right under application Number 2526 and Newton the next right should there then be unappropriated water available.

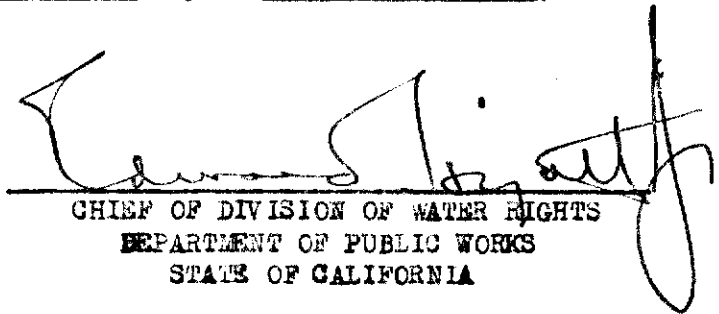
The Bear Valley Mutual Water Company having waived their rights on Palmadge and Seeley Creeks, there appears to be unappropriated water in the sources named in the amended application during a normal year.

ORDER

Application Number 2526 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 2526 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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