

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

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In the Matter of Application 11377 of Ray Brooks  
to Appropriate Water from an Unnamed Spring, locally  
called Brooks Spring, Tributary via Gorman Canyon and  
Sand Canyon to Santa Clara River in Los Angeles, County  
for Domestic and Stockwatering Purposes.

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Decision A. 11377 D. 581

Decided June 9, 1948

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APPEARANCES AT HEARING HELD  
AT LOS ANGELES, OCTOBER 9, 1947

For the Applicant

Ray Brooks

Edward R. Conroy

For the Protestants

Alma Fisher

Kenneth K. Wright

Universal Engineering Company

Kenneth Volk

EXAMINER - GORDON ZANDER, Principal Hydraulic Engineer, Division of Water  
Resources, Department of Public Works, for EDWARD HYATT, State  
Engineer

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OPINION

GENERAL DESCRIPTION OF THE PROPOSED DEVELOPMENT

Application 11377 was filed by Ray Brooks on April 17, 1946. The  
source originally named was Reynier Spring, in Los Angeles County, tributary  
to Santa Clara River. The amount applied for is 0.02 cubic foot per second,  
year round. The water is wanted for domestic use and stock watering. The  
proposed point of diversion was first described as being located 1500 feet

south and 500 feet west from the north quarter corner of Section 11, T 3 N, R 15 W, SBB&M. This description was later amended to read "S 45° 26' 50" East, 796.8 feet" from the same point of reference. The application proposes diversion by means of a dam, 3 feet in height and 12 feet in top length, and delivery therefrom by gravity, through 4500 lineal feet of 1½-inch pipe. The place of use designated is Lot 6 of Section 2, T 3 N, R 15 W, SBB&M.

#### PROTESTS

Alma Fisher asserts that the spring from which she derives her supply yields an average of 5000 or 6000 gallons of water per day; that she uses such water for domestic purposes and for watering livestock; and that the appropriation proposed by the Applicant in the amount of 13,000 gallons per day will prevent such use to continue. She asserts further that use was initiated by her predecessors in interest in 1880 and has continued therefrom; and that her use of water is also covered by Application 5805, Permit 3023, License 1107, in the amount of 10,000 gallons per day. She explains that the first user of Reynier Spring, in 1880 was Claude De Ray, who conveyed water by flume to the property which she now owns; that the full output of the spring was used from that time on for domestic purposes and for livestock watering until the present, except that domestic use was interrupted in 1944, the old house being no longer inhabitable and materials for new buildings being thus far unobtainable. She states that water is diverted throughout the year, that domestic use will resume as soon as another house can be built, and that use since 1944 has included the irrigation of alfalfa. She describes her point of diversion as being located within the SE¼ NW¼ of Section 11, T 3 N, R 15 W, SBB&M. No statement is given as to conditions under which her protest may be disregarded and dismissed.

The Universal Engineering Company, Ltd., contends that the proposed appropriation will reduce the available supply from the watershed tributary to

its lands which, according to the protest, lie within Sections 1, 2 and 11, T 3 N, R 15 W, SBB&M. This protestant states that it and its predecessors in interest have, since 1935, obtained a part of their water supply by pumping from a well in the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 1 of the township above named, and a part by diversion from the creek. It contends that the proposed appropriation will divert water from Reynier Spring, naturally tributary to Gorman Creek drainage, for use in Placerita Canyon, which lies in a different watershed; and that this diversion would reduce the already meager water supply available from Gorman Creek. Nothing is stated in the protest as to conditions under which the protest may be disregarded and dismissed.

#### ANSWERS

In reply to the protest by Alma Fisher the applicant states that according to his estimate the spring in question normally yields 25,000 gallons of water per day; that through arrangement with one Frank Sesma, now deceased, a son-in-law of Della Reynier, the former owner of the property, water was piped to a cattle-watering trough, equipped with an automatic float and belonging to the applicant; that for 4 years the applicant's cattle, from 50 to 65 head in number, were watered entirely from the trough mentioned except during the four winter months when water was plentiful and the cattle were pastured elsewhere; that during that entire time, the cattle on the Fisher property had more water than they could consume and the excess flowed away and was wasted. The applicant states further that there was no difficulty about the use of water until Mrs. Fisher purchased the Reynier property; that thereafter she objected to such use and refused to recognize the arrangement made with Mr. Sesma; that arguments by the applicant were unavailing and that many times his trough has been filled with mud, the automatic float removed and destroyed and the supply of water cut off. The applicant denies that this protestant has ever used the water in question for irrigating alfalfa, ornamental shrubs

or a vineyard, or for any purpose other than for watering livestock; and requests in this regard that an investigation be made by an engineer of the Division. The applicant expresses the opinion that 80% of the water coming through this protestant's pipe line is being wasted, asserts that such <sup>could</sup> water/be used by him for watering livestock, and argues that such situation is contrary to State policy. He states that in his opinion this protestant is exceeding her rights and that the sustaining of her protest would be unfair and would deny to him the use of 230 acres of pasture land which is valueless without water. He makes reference to an affidavit attached to his protest and executed by one Wm. F. Wertz, referred to as a lifelong resident of the locality. The gist of the Wertz affidavit is that there are two springs, rather than one; that one spring furnishes the water which the protestant has been receiving and that the other, the yield of which has thusfar been wasted, is the one which will supply the applicant's proposed intake; that without apparent reason the two springs have recently been connected by a 1½-inch pipe line, some 20 feet long; that about 20% of the water entering the Fisher pipe line is wasted through leaks therein and that the water flowing through the pipe line finally enters a watering trough, overflows therefrom and, largely, wastes upon the ground. The affiant states that in viewing the protestant's property he could find no signs of alfalfa or vineyard irrigation. He reports no signs of recent domestic occupancy and estimates that currently 20% of the water diverted from the spring is utilized and 80% wasted.

In reply to the protest by Universal Engineering Company, Ltd., the Applicant asserts ownership of the property for which the water is sought and that said property is so situated that the water sought, if flowing openly, would cross it. He states that according to his information and belief, it does not in any way replenish or affect the water well referred to by this protestant, due to the remoteness of such water well, which is approximately

1½ miles from the proposed point of diversion. The applicant takes the position, in his answer, that the case cannot be properly disposed of except by an inspection followed by formal hearing. He states that a determination of the matter is vitally important to him; that the water applied for will permit him to graze 75 head of cattle; and that without this water the property cannot be used. He requests that action be expedited.

HEARING HELD IN ACCORDANCE WITH THE WATER CODE

Application 11377 was completed in accordance with the Water Code and the Rules and Regulations of the Division of Water Resources, and being protested, was set for public hearing under the provisions of Article 13, Section 733(a) of the California Administrative Code on Thursday, October 9, 1947, at 2:00 o'clock P.M. in Room 803, California State Building, Los Angeles, California. Of this hearing the applicant and protestants were duly notified.

GENERAL DISCUSSION

Testimony at the hearing established the fact that the Applicant's intention in filing Application 11377 was to initiate an appropriation from a certain spring, which he loosely called Reynier Spring, but which, strictly speaking, is a nearby spring, separate and distinct from Reynier Spring, the source from which Protestant Alma Fisher derives her supply.

To simplify discussion at the hearing the spring from which water is sought under Application 11377 was designated "Spring A" and the spring serving Protestant Fisher and usually termed "Reynier Spring" was designated "Spring B".

The inaccuracy of the descriptions of the points of diversion named in both Applications 11377 and 5805 was discussed at the hearing and Applicant Brooks agreed to have a survey made to establish correctly the location of "Spring A", from which he desires to divert. This survey was subsequently made and by letter dated November 25, 1947, Applicant Brooks, through his attorneys,

furnished a revised description, with a map showing the purported location of the springs in question, and requested that his application be amended accordingly. In the revised description, Spring "A" has been designated "an unnamed spring locally called Brooks Spring". Paragraphs 1 and 4 of Application 11377 have since been altered, in accordance with the Applicant's request.

As shown on the above mentioned map, "Spring A" lies S 69° 44' E, 35.6 feet from "Spring B". The two springs may be seen on the photograph, marked "Exhibit A" and filed with the transcript of the Hearing. Except for a 1½-inch pipe, which appears also in the photograph mentioned and is said to have been installed subsequent to the filing of Application 11377, the two springs appear to have no connection and to be independent of each other. The testimony offered indicates that diversions from "Spring A" will not diminish the yield from "Spring B".

The objection of Protestant Alma Fisher to the proposed appropriation appears to have been due mainly to the confusion resulting from the inaccurate reference to the proposed source as "Reynier Spring" and to her apprehension in consequence that the availability to her of water issuing from Reynier Spring was threatened. The propriety, on the part of this protestant, of connecting springs "A" and "B" by pipe line, in 1946, after the filing of Application 11377, was questioned at the hearing, and no effort was made to defend it. On the contrary counsel for this protestant asserted that this pipe line will be removed, and in effect, disclaimed any right to divert from Spring "A". The confusion as to the nomenclature of the two springs having been resolved, and a right by Protestant Fisher to waters of Spring "A" having been disclaimed, it appears that no valid objections by this protestant, to the proposed appropriation, remain.

The objection of the other protestant (Universal Engineering

Company, Ltd.) stems from the opposition of an irrigator who is dependent upon a ground water supply, to a diversion, however small, of waters tributary to the basin from which his supply is pumped. This protestant withdrew Application 11261, which it had earlier filed, for 0.5 cubic foot per second from Gorman Canyon, because of alleged difficulty in obtaining construction materials; but it elected, as a lower riparian owner, to maintain its protest against Application 11377. Testimony indicates that the flow of the stream at or near the applicant's proposed point of diversion measured 0.053 miners inch on July 31 (presumably in 1946) and 0.092 miners inch on February 17, 1947; that the proposed point of diversion is a mile or more from this protestant's well; that the contribution, if any, by the small flow existing in the vicinity of Reynier Spring, to lands irrigated by Universal Engineering Company, is inconsequential. This protestant conceded that the amount applied for by Applicant Brooks is relatively small, offered no evidence that injury would result from the proposed appropriation and seemed satisfied with the assurance given by the applicant, in the course of the proceedings, as to the amount and purpose of the appropriation sought. The area of the watershed tributary to "Spring A" is very small indeed in comparison to that tributary to the Universal Engineering Company property. That fact, coupled with the extremely small yields indicated by the measurements above quoted and the distance such small stream would traverse in reaching this protestant's lands, and coupled also with the dearth of testimony introduced as to resulting injury, points to the conclusion that the Universal Engineering Company protest is without material foundation.

#### SUMMARY AND CONCLUSIONS

Unappropriated water exists in the unnamed spring now referred to in Application 11377 as Brooks Springs, from which this Applicant proposes to appropriate. Such water may be taken and used as proposed in said application

without injury to the protestants or to other vested rights, and therefore the application should be approved.

ORDER

Application 11377 having been filed with the Division of Water Resources as above stated, protests having been filed, a public hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 11377 be approved and that a permit be issued to the applicant subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 9<sup>th</sup> day of June 1948.

  
Edward Hyatt, State Engineer

