

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

oOo

IN THE MATTER OF APPLICATION NUMBER 3748 OF J. D. CARIKER  
TO APPROPRIATE FROM A WELL IN SAN BERNARDINO COUNTY  
FOR AGRICULTURAL PURPOSES

oOo

DECISION NO. 3748 - D 61  
Decided June 23, 1925

oOo

APPEARANCES AT HEARING HELD FEBRUARY 13, 1925.

For Applicant - None  
For Protestants - None  
Examiner - Harold Conkling for Edward Hyatt, Jr.,  
Chief of Division of Water Rights.

oOo

O P I N I O N

On December 5, 1923, J. D. Cariker filed his application Number 3748 for a permit to appropriate one cubic foot per second between March first and December first from a well in San Bernardino County for the irrigation of eighty acres. This application was jointly protested by J. H. Heard, G. W. Patrick, G. T. Patrick, Anne Patrick and Addie Lambkin. A separate protest was also filed by G. W. Patrick.

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 a public hearing at 818 Pacific Finance Building, Los Angeles, at 10:00 o'clock a. m. on Feb-

ruary 13, 1925. Of this hearing applicant and protestants were duly notified. No appearances were made on behalf of the applicant or any of the protestants as noted above.

Protestants claimed to have used some water for domestic purposes from a well near that proposed by the applicant, but no water has been used in recent years due to a failure of the supply. Protestants allege that their lands are riparian to the underground source in question and that they will ultimately require all of the available water supply.

Protestants further claim that applicant cannot secure a right of way for the proposed pipe line and that the proposed project is impractical on account of lack of water supply. The proposed pipe line would cross land of one of the protestants and an unsigned letter purporting to allow right of way was received by the Division on September 22, 1924. It is therefore not clear whether or not applicant would be able to consummate the proposed appropriation if the application were approved.

Since the hearing applicant has been advised that the Division of Water Rights is somewhat doubtful as to its jurisdiction in the matter, it being sought to divert from a well the water in question being probably percolating water.

The location of the proposed well is stated in the application to be in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 34, Tp. 1 N. R 5 E. S. B. M. and a reference to available maps does not reveal the existence of surface water or an underground stream to which said well would be

apparently tributary. The notice of the application recites among other things that the application is to appropriate from a well tributary to no stream. It therefore does not appear that the application is to appropriate from underground waters over which the jurisdiction of the Division extends. In this connection reference is made to Section 42 of the water commission act which provides in part as follows:

"Whenever the terms stream, stream system, lake or other body of water or waters occurs in this act, such term shall be interpreted to refer only to surface water, and to subterranean streams flowing through known and definite channels."

Under such a status of facts it is incumbent upon the applicant to bring himself within the jurisdiction of the Division if he is to be granted a permit. Applicant has, however, failed to reply to letters addressed to him by the Division under dates of August 13, 1924, September 24, 1924, October 31, 1924. Also, applicant failed to pay costs of the hearing held upon the application under date of February 13, 1925, and has never replied to a letter of March 11, 1925, calling upon him to make a showing in support of the Division's jurisdiction to further entertain his application in view of the apparent lack of source from a subterranean stream or surface supply. Having failed to reply to repeated letters and invitations to act in support of his application and having failed to attend the hearing upon his application, the applicant must be deemed to be very indifferent to say the least.

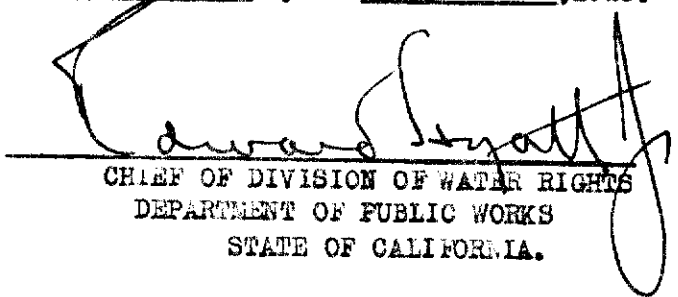
The source of the proposed appropriation being a well and there being no information or evidence before the Division that said well will tap a subterranean stream flowing through known and definite channels or tap the underflow of a surface stream or other surface supply, and there being no subterranean stream or surface water known to exist in said locality from whence the water in question would be obtained thru the well, it is found that the application in question is not an application to appropriate from a subterranean stream flowing thru known and definite channels or to appropriate from surface water. Hence it appears the jurisdiction of the Division does not obtain and the application should be rejected and denied for that reason.

**ORDER**

Application Number 3748 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 said application number 3748 be and the same is hereby denied without prejudice to applicant's right to refile and bring himself within the jurisdiction of the Division of Water Rights.

Dated at Sacramento, this 23rd day of June, 1925.

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