

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

*Decision
file*

oOo

IN THE MATTER OF APPLICATION NUMBER 3897 BY ALLISON
BARLOW ET AL, TO APPROPRIATE WATER FROM A SPRING IN
THE WATERSHED OF SANTA ANA RIVER, IN SAN BERNARDINO
COUNTY FOR DOMESTIC PURPOSES

DECISION NO. 3897 D 78

Decided October 20, 1925

APPEARANCES AT HEARING HELD September 23, 1925.

For Applicants: Kenyon F. Lee, Attorney

For Protestant: No appearance

Examiner: Edward Hyatt, Jr., Chief of Division of Water Rights

oOo

O P I N I O N

This is an application to appropriate water from a spring near the Santa Ana River for domestic purposes on three cabin sites leased from the Forest Service by the applicants. It was filed March 8, 1924 and, as amended at the hearing, proposes the appropriation of 500 gallons per day. The application was protested by the Bear Valley Mutual Water Company.

The application was completed in accordance with the Water Commission Act and the Rules and Regulations of the Division of Water Rights and being protested was set for a public hearing in the Law Library of the Court House at San Bernardino at 3:00 o'clock P.M. on September 23, 1925. Of this hearing applicants and protestant were duly notified.

It appears from evidence presented by applicants at the hearing that the applicants have used water from the spring in question, which is about 300 feet from Santa Ana River, for about five years and that the application was filed in order that such use might be legal. It appears also that no surface water from the source reaches the river and that, except for such

water as might seep through to the river, no use has ever been made thereof other than that by applicants as proposed in this application.

The Bear Valley Mutual Water Company protest is based on its claimed rights to use water from Santa Ana River under an appropriation initiated in 1884 and beneficial use since, the entire flow being claimed. The point of protestant's diversion from the river is some twelve miles downstream and Bear Creek which is stated by protestant to be one of the main sources of its supply enters Santa Ana River some six miles below this proposed point of diversion. Protestant has offered to provide water for applicant's use if applicant buys stock in the protestant company sufficient to entitle him to the amount desired.

The circumstances in this case are very similar to those in the case of Applications Number 4294 and Number 4362 on which Decision Number 4294-4362, D 77, has been written. From this decision we quote as follows:

"Protestant did not avail itself of the opportunity afforded under the law for a public hearing and has made no effort to show that the use proposed by these applicants would in any way interfere with its own use, nor has it shown that it has in the past engaged in or is now permitted to engage in the service of water in the locality affected by these appropriations. This protestant's point of diversion is some ten miles downstream from the point of diversion proposed by these applicants, and we cannot concur in the opinion of protestant that a prior appropriation on the lower reaches of a stream entitles the prior appropriator to dictate the terms of all use by subsequent appropriators on the watershed above. We take it that the prior appropriator cannot be heard to complain against the new appropriator unless there is probability of interference and on this point protestant has submitted no evidence".

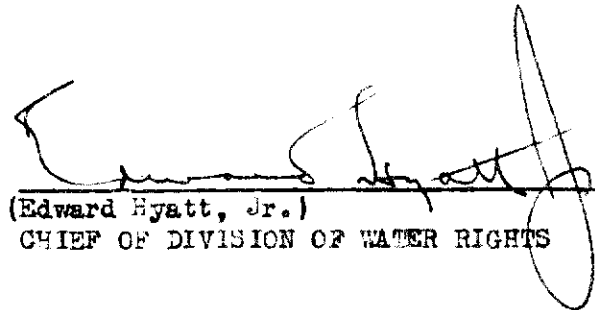
As in the case just cited we conclude that the use of 500 gallons per day for domestic purposes within the watershed, as proposed by these applicants, from a source having only a subsurface connection with the stream supplying protestant at a point some twelve miles below does not raise a presumption of sufficient interference to justify the denial of this application.

O R D E R

Application Number 3897 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 3897 be approved and that a permit be granted to the applicants subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento this 20th day of October 1925.



(Edward Hyatt, Jr.)
CHIEF OF DIVISION OF WATER RIGHTS

JCF:MP