

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

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In the Matter of Application 5882 of Floyd E. Owen, et al
to appropriate from an unnamed Spring Tributary
to Bear Creek in San Bernardino County
for Domestic Purposes

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DECISION A 5882 - #245

Decided December 14, 1929.

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APPEARANCE AT HEARING HELD March 13, 1929

For Applicant

Floyd E. Owens et al

Floyd E. Owens

For Protestant

Bear Valley Mutual Water Company

Geo. E. Hinckley

EXAMINER: Harold Conkling, Deputy in Charge of Water Rights,
Division of Water Resources, Department of Public Works,
State of California.

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O P I N I O N

GENERAL FEATURES OF THE APPLICATION

Application 5882 was filed by Floyd E. Owens on April 20, 1928. On November 15, 1928 this office was notified that 1/3 interest in the application had been assigned to V. E. Wire and 1/3 interest to the Estate of Frank Owens, deceased, F. E. Owens Administrator.

The application proposes an appropriation of 0.003 cubic foot per second from an unnamed spring, tributary to Bear Creek in San Bernardino County for domestic purposes on lots 105, 106 and 107 of the Big Bear Lake Tract. The period of diversion is from May 1st to November 1st of each season. The point of diversion is located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 21, T2N, R1W,

S. B. B. & M. The application was protested by the Bear Valley Mutual Water Company.

PROTEST

The Bear Valley Mutual Water Company without first obtaining definite information as to the source of the proposed diversion filed a protest against the approval of application 5882 on August 17, 1928, on the assumption that the waters which applicant seeks to appropriate supply a portion of the underflow of Bear Creek and support the streamflow which the company and its predecessors in interest have applied to beneficial use during the past forty years.

HEARING HELD IN ACCORDANCE WITH SECTION 1a OF THE WATER COMMISSION ACT

Application 5882 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Resources, and being protested was set for a public hearing in accordance with Section 1a of the Water Commission Act on March 13, 1929 at 10:00 o'clock A.M. in the Council Chamber of the City Hall, San Bernardino, California. Of this hearing applicant and protestant were duly notified.

HISTORY

On November 3, 1924 F. E. Owen filed Application 4294 to appropriate 0.003 cubic foot per second of underground water tributary to Bear Creek for domestic purposes on lots 105, 106 and 107 of the Big Bear Tract which are named as the places of use in Application 5882.

Application 4294, being protested by the Big Bear Lake Mutual Water Company, was set for a public hearing on September 23, 1925 at San Bernardino. At this hearing applicant requested that the amount named in Application 4294 be reduced to 100 gallons per day as it was not likely that his demands would exceed that amount. The application was so amended and since the proposed use

was for domestic purposes within the Bear Creek Watershed, and no showing was made by protestant that any actual loss would result therefrom in the quantity of water reaching its point of diversion, or that the delivery of said water would be retarded, Application 4294 was approved by the issuance of Permit 2288.

The point of diversion named in Application 4294, Permit 2288 is a small spring within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 21, T2N, R1W, S.B.B. & M. at the same level as applicants cabin and about 500 feet distant therefrom and in order to obtain water at the cabins it requires either the pumping or carrying of water from the regulation tanks.

As a result of some correspondence between this office and the office of the Forest Supervisor relative to an apparent error in the description of the point of diversion it was suggested by the Forest Supervisor that there appeared to be no reason why Mr. Owen's supply could not be obtained from springs lying above and to the west of his lots thereby obtaining a gravity supply and better fire protection, instead of from the source of supply named in Application 4294, Permit 2288.

The source proposed by the Forest Service was investigated by the applicant who found about 5 or 6 separate and distinct springs to the west of and above his place of use and he requested that blanks be sent to him in order that he might petition for a change in point of diversion.

Both forms for requesting a change in point of diversion and for filing a new application were sent to Mr. Owens on April 3, 1933 with the suggestion that if the new point of diversion was on the same source as the old point of diversion a petition to change the point of diversion was in order, but if, on the other hand, the new point of diversion was on a different source, a change could only be affected by the filing of a new application.

The matter was left to the judgment of the applicant who on April 20, 1928 filed Application 5882 with the understanding that if and when this application was approved Permit 2288 heretofore issued on Application 4294 would be withdrawn.

PHYSICAL CHARACTERISTICS

Aside from the fact that the source of the proposed appropriation is one of several springs or streams which arise within a cienega covering an area of from 1/2 to 3/4 of an acre, very little information relative to the physical characteristics of the source in question is available.

The source is tributary to Bear Creek and there appears to be six separate and distinct streams flowing past the road about 1/2 mile below the cienega. Testimony presented at the hearing indicated that there was a large amount of water flowing in these streams but no information was presented as to whether or not there was a surface connection between the streams and Bear Creek.

The point of diversion of protestant is on the Santa Ana River about five miles below its junction with Bear Creek and about 13 miles below the proposed point of diversion of the applicant.

INSPECTION BY PROTESTANT

As very little testimony was presented at the hearing relative to the proposed project and as protestant had not familiarized itself with the physical facts, it was agreed at the close of the hearing that a continuance thereof might be obviated if the Bear Valley Mutual Water Company would present its view of the situation, as determined by a field inspection, in the form of a written statement to this office, a copy to be served upon the applicant and the applicant allowed a reasonable time to reply thereto.

Under date of June 7th the protestant reported that the springs from which the applicant seeks to divert feed directly into a live stream which has a surface connection with Bear Creek which is one of the main sources of supply of water of the Bear Valley Mutual Water Company; that all of the springs contribute to the live stream referred to which, within a mile, enters Bear Creek; that this stream is an increasing stream from the springs to Bear Creek and any water taken therefrom would reduce the flow of the stream by the amount diverted by the applicant.

Although protestant served a copy of this letter on the protestant and the applicant was given ample opportunity to reply thereto no reply has been received in this office.

APPLICATION 5882 SHOULD BE DENIED

Protestant after conducting a field investigation reports that the waters which applicants seeks to divert are tributary by a direct surface connection to the waters of Bear Creek and to the Santa Ana River, the waters of which it appears are entirely appropriated by the Bear Valley Mutual Water Company. No showing to the contrary has been made by applicants although they have been allowed ample opportunity to do so and such being the case it is the opinion of this office that there is not a sufficient amount of unappropriated water in the source from which applicants propose to divert to justify the approval of this application. It should therefore be denied.

ORDER

Application 5882 for a permit to appropriate water having been filed with the Division of Water Rights as above stated, a protest having been filed, a public hearing having been held and the Division of Water Resources now being fully informed in the premises:

IT IS HEREBY ORDERED that said Application 5882 be rejected and cancelled upon the records of the Division of Water Resources.

WITNESS my hand and the seal of the Department of Public Works of the State of California, this 14th day of December 1929.

EDWARD HYATT, STATE ENGINEER

BY

Harold Cochran
Deputy

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