

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

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In the Matter of Application 6511 of Colmer R. Jones to
Appropriate from an Unnamed Spring Tributary of
Piru Creek in Los Angeles County, for Irri-
gation, Domestic and Stock Watering
Purposes.

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DECISION A 6511 D-276

Decided *November 8, 1930.*

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APPEARANCES AT HEARING HELD AT LOS ANGELES, AUGUST 29, 1930

For Applicant

Colmer R. Jones

A. S. Jones

For Opponents

Southern California Edison Company
H. E. Townsend

Geo. E. Trowbridge
H. E. Ramsay

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 APPLICATION 6511

Application 6511 was filed on June 1, 1929, by Mrs. Colmer R. Jones. It proposes an appropriation of 0.005 cubic feet per second from an unnamed spring tributary of Piru Creek in Los Angeles County throughout the entire year for domestic and irrigation purposes on 100 acres of land within Section 32, T 6 N, R 17 W, S.E.E. & W. The point of diversion is described as being located S. 60° 21' 06" W. 833 feet from southerly corner of Lot "1", Block 2

of Calc Flat Special Use Tract of Angeles National Forest. The application was protested by the Southern California Edison Company and W. H. Townsend.

PROTESTS

The protestants claim that the spring named as the proposed source in Application 6311 is the same one described in Application 3163, Permit 1390, License 653, that the legal title of the lands and water right remains with the Southern California Edison Company and the equitable title in the name of Mr. Townsend who has a contract of purchase with the Company and allege in effect that the amount of water from the source is insufficient to supply their demands.

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

Application 6311 was completed in accordance with the Water Commission Act and 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 August 25, 1930, at 2:00 o'clock P.M. in Room 1026 Associated Realty Building, Los Angeles, California. Of this hearing applicant and protestants were duly notified.

APPLICANT CLAIMS INAPPROPRIATE WATER
BY VIOLATION OF ABANDONMENT

The representative of the applicant stated at the hearing that the water which applicant proposes to appropriate under Application 6311 is the same as that which the Southern California Edison Company had acquired the right to divert under its Application 3163, Permit 1390, License 653. Applicant claims the rights under the last named application have been forfeited by abandonment on the part of the Company and therefore the water is subject to appropriation. Applicant admitted that in the event abandonment could not

be proved, there would be no unappropriated water available. (Transcript page 8.) The real question before us therefore is whether or not the water right under Application 3138, Permit 1390, License 658 has been abandoned.

Application 3138 - Permit 1390 - License 658

Application 3138 was filed by the Southern California Edison Company on December 4, 1923, for an appropriation of 0.005 cubic foot per second throughout the entire year for domestic purposes at the Atmore Patrol Station and the irrigation of 2 acres of land surrounding the station which was located in the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 33, T 6 N, R 17 W, S.B.P. & M. The application was approved on April 30, 1925, by the issuance of Permit 1390.

On June 11, 1927, the project was inspected by an engineer of this office who reported that the maximum yield of the spring had been about 1440 gallons per day or approximately 0.002 cubic foot per second and that the available water had been used for domestic purposes by two families occupying two houses fully equipped with plumbing fixtures, for the watering of two head of stock and some poultry, for the irrigation of about 1/5 acre of garden adjacent to the houses and for fire protection purposes. The spring which was situated some three miles north of the place of use appeared to be the only reliable source of water in that locality.

Based upon the report of the inspecting engineer the right of the Southern California Edison Company to the use of 1440 gallons per day or approximately 0.002 cubic foot per second throughout the year for domestic purposes was confirmed by issuance of License 658 on January 31, 1928. The place of use described in the license was the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 33, T 6 N, R 17 W, S.B.P. & M.

On October 21, 1929, this office received a letter from the Southern California Edison Company stating that it had transferred its interests in the license to Haldeman E. Townsend and the records of this office were changed accordingly. It later appeared that Mr. Townsend had not yet obtained a legal title to the property named as the place of use in the license but that he had entered into a contract of purchase with the Company which if consummated would result in his ownership of the lands and water right.

On March 12, 1930, a petition was filed in this office by Mr. Townsend requesting that the place of use described in the license be changed to read "The ranch house adjoining the Atmore Patrol Station in Section 33, T 6 N, R 17 W, S.B.B. & M. for domestic and stock watering purposes, using the surplus only from the Atmore Patrol Station within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ ". In reply to this request he was informed by letter dated April 17, 1930, that as the ranch house lay within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 33, T 6 N, R 17 W, S.B.B. & M. a petition for change in place of use was not necessary as that area was already described as the place of use in License 658.

Under date of June 26, 1929, the Southern California Edison Company informed this office that the water right under License 658 had not been abandoned and that although the Company was intending to transfer the Patrol Station to another point it intended to sell the property on which the Atmore Patrol Station was located together with the water right incident to the property. Mrs. Jones was advised of this declaration by the Company.

GENERAL DISCUSSION

In support of applicant's contention that the project of the Southern California Edison Company had been abandoned, a letter dated January 28, 1929, was introduced at the hearing as applicant's Exhibit No. 1, addressed to one Mr. Jourdan and signed by Frank E. Lillier right of way agent for the Southern

California Edison Company which read in part as follows:

"Please be advised that our Company is abandoning what is known as the Atmore Patrol Station and we are putting this property on the market for sale".

Applicant alleges in effect that the license was granted for the use of water at the Atmore Patrol Station and since this station had been abandoned the water right appurtenant thereto had also been abandoned.

Testimony was also introduced by the applicant to the effect that from September or October 1928, when the Company moved its men from the Patrol Station, until June 1, 1929, no water was used on the property and since that date has not been used upon the lands for which it was appropriated.

Testimony presented at the hearing by the protestant indicated that the first use of water under Application 3168, Permit 1390 was made on January 16, 1924, and subsequent to that date the Southern California Edison Company had used the water at the Patrol Station for domestic purposes and the irrigation of shrubbery until on or about May 20, 1929, at which time Mr. George E. Read acquired an option on the property. From May 20, 1929, to about August 1929, Mr. Read used the water for the same purpose. In August he relinquished his option to Mr. Townsend who took possession of the property and has used all of the available water from the spring since that time on the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 33, T 6 N, R 17 W, which is described as the place of use in the license.

Mr. Frank E. Miller, right of way agent for the Southern California Edison Company and author of the letter introduced as Exhibit 1 at the hearing, testified that about January 1, 1929, the Southern California Edison Company decided to discontinue the use of the property for patrol purposes. He stated that the letter which was written by him was not written with the purpose of

conveying the impression that the Company was abandoning the water right or the land itself but merely that the Company was abandoning the particular use to which it had been put. He also stated that the Company had at no time intended to abandon the water right and no orders or instructions had been issued to that effect.

Mr. A. S. Jones, applicant's representative withdrew from the hearing before the protestants' case was put on and the testimony presented by them remains uncontroverted.

CONCLUSION

It is the opinion of this office that intention of abandonment of Application 3168, Permit 1590, License 658 was not shown. There is nothing in the letter introduced by the applicant which could be construed as abandonment of either the lands or water right by the Southern California Edison Company. It merely indicates that it proposed to discontinue the use of the Atmore Patrol Station for patrol purposes and to sell the lands upon which it was located.

Although it appeared from testimony introduced by the applicant that for a few months little or no water had been applied to beneficial use by the Southern California Edison Company the period of non-use, if any, was not of sufficient duration to constitute a forfeiture of the water right.

The applicant has not proved his contention that the right has been forfeited by abandonment and since by his own admission to the effect that unappropriated water was available only by virtue of the alleged abandonment, it is the opinion of this office that Application 6311 should be rejected and cancelled upon the records of this office.

ORDER

Application 6511 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, protests 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 Application 6311 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 *8th* day of *November*, 1930.

EDWARD HYATT, State Engineer

BY *Harold Conkling*
Deputy

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