

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

*File*

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In the Matter of Application 3628 of Hans Lof to appropriate water from three unnamed springs in Owens River watershed in Mono County for irrigation purposes.

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DECISION A 3628 D 162

Decided July 28, 1927.

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APPEARANCES AT HEARING HELD June 30, 1927.

For Applicant:  
Hans Lof

in propria persona  
Fred R. Smith  
Bishop, California

For Protestants:  
City of Los Angeles and the Board of Public  
Service Commissioners of the City of  
Los Angeles

Ford Hendricks  
Los Angeles, California

Wm. H. Birchim, James F. Birchim and  
Frankie G. Leibly

Wm. H. Birchim  
Hollywood, California

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

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O P I N I O N

This application was filed September 6, 1923. It proposes a diversion of five tenths (0.5) cubic foot per second from three unnamed springs Nos. 1, 2 and 3 in the upper Owens River watershed in Mono County, to be directly applied to beneficial use without storage. The water is to be used from April 1st to October 1st of each season for the irrigation of 168 acres, consisting mostly of meadow grass, in Lots one (1) and two (2), Section 31, T 4 S. R 11 E, M.D.B. & M. It was protested by the City of Los Angeles and the Board of Public Service Commissioners of the City of Los Angeles, Wm. H. Birchim, James F. Birchim and Frankie G. Leibly.

The 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 in the Court Room of the County Court House at Independence at 11:00 o'clock A.M. on June 30, 1927. Of this hearing applicant and protestants were duly notified.

The protest of the City of Los Angeles and Board of Public Service Commissioners of the City of Los Angeles was filed March 8, 1924, and alleges in effect that protestant is owner and appropriator of all the waters of Owens River; that the waters of the said springs are tributary to Owens River; and that none of the waters of Owens River are unappropriated or subject to appropriation.

The protest of Wm. H. Birchim and James F. Birchim was filed March 12, 1924 and the protest of Frankie G. Leibly was filed March 22, 1924. The latter three parties filed a joint protest and base their claim of right upon a notice of appropriation filed August 5, 1899 by J. G. W. Birchim predecessor in interest to Wm. H. Birchim and filed for record in Liber C, Folio 226 of "Water Locations" in the Records of Mono County, California, appropriating the waters of Spring No. 2 of applicant, and upon 24 years continuous use thereafter upon the  $E\frac{1}{2}$   $NE\frac{1}{4}$  Section 36, T 4 S, R 29 E, the  $NW\frac{1}{4}$  and the  $W\frac{1}{2}$   $NE\frac{1}{4}$  Section 31, T 4 S, R 30 E, M.D.B. & M. The exact language of the protest left room for doubt whether protestants objected to diversion from Spring No. 2 only or from all three springs filed on by Applicant Lof.

Answering the protest of the City of Los Angeles applicant avers that diversion of the flow of said springs would not diminish the flow of Owens River; that the natural flow of said springs flows on and over the lands of applicant as evidenced by a large area of meadow grass some 80 acres in extent; that the natural flow of said springs does not flow beyond the lands of applicant and "That if these springs are allowed this applicant to be used on his lands, as

they have been used, or to the extent as heretofore used, he is satisfied with any such decision from the department of the Division of Water Rights".

In his answer to the protest of Leibly and Messrs. Birchim, applicant alleges "that the water from said springs has not been conducted across the lands of said applicant to the tract of land described by protestants, except in the early spring when the snows melt and great flood waters cover the entire country"; that within the past five years the natural flow of said springs has not flowed down upon or across the lands of protestants; that to the best of his knowledge and belief the waters of said springs have not flowed upon or over the lands of protestants for many years prior to the five year period named above; that no attempt has been made by protestants to irrigate their lands and from the character of protestants' lands believes that same have not been irrigated by the natural flow of said springs; and that no use has been made of the waters of said springs by protestants such as would "entitle protestants or any other persons to have acquired the right to the use of the said springs under the law of usage".

Immediately after the hearing was convened the protest of the City of Los Angeles was withdrawn and further reference thereto may accordingly be dismissed.

It developed at the hearing that protestants Birchim, et al, were protesting against the diversion and use of the waters of Spring No. 2 only of applicant located in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 36, T 4 S, R 29 E, M.D.B. & M.; that protestants had not given consideration to the applicant's answer to their protest, the same not having been served upon them; whereupon a recess was taken for the purpose of affording opportunity for a conference between applicant and protestant.

In due course the hearing was reconvened; protestant stated that the situation had been "clarified", and the protest was unconditionally withdrawn.

O R D E R

Application 3628 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 the said Application 3628 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate.

Dated at Sacramento, California, this 28th day of July , 1927.

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

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