

W 7 file

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

oOo

In the matter of Applications 4932 and 5119 of G. W. Peer, Application 5261 of J. C. Baxter, Application 5289 of Baxter Bros. and Application 5370 of R. J. Bandhauer and Joe Hall to appropriate water from certain springs in Lead Canyon and Paiute Canyon watersheds tributary to Saline Valley in Inyo County, California, for mining, milling and domestic purposes.

oOo

DECISION NO. A 4932, 5119, 5261, 5289, 5370 D 170

Decided Sept. 12, 1927.

APPEARANCES AT HEARING HELD June 29, 1927

For Applicants:

G. W. Peer  
J. C. Baxter  
Baxter Bros.  
R. J. Bandhauer and Joe Hall

A. H. Swallow

Jess Hession

For Protestants:

G. W. Peer  
M. Q. Waterson

A. H. Swallow  
Howard R. Link

EXAMINER: Edward Hyatt, Jr. Chief of Division of Water Rights, assisted by Irvin M. Ingerson, Ass't. Hydraulic Engr., Division of Water Rights.

oOo

O P I N I O N

Description of Proposed Projects.

Through the two applications 4932 and 5119 filed February 26, 1926 and July 22, 1926 respectively, of G. W. Peer it is sought to appropriate a total of 0.25 second foot from three springs, namely Upper Addie Spring, Lower Addie Spring and Lower Lead Canyon Spring, tributary to Lead Canyon, to convey the waters in a suitable pipe line to a camp and millsite situated in Saline Valley for mining, milling and domestic purposes.

Through Application 5261, filed November 6, 1926, of J. C. Baxter it is sought to appropriate 0.03 second foot from a spring in upper Paiute

Canyon tributary to Saline Valley, to convey the waters in a suitable pipe line to a camp and millsite situated near the Peggy Mine for mining and domestic purposes.

Through Application 5289 filed November 30, 1926, of Baxter Bros. it is sought to appropriate 0.25 second foot from Lower Lead Canyon Spring tributary to Lead Canyon, to convey the water in a suitable pipe line to a camp and millsite situated in Lead Canyon for mining, milling and domestic purposes.

Through Application 5370 filed March 4, 1927, of R. J. Bandhauer and Joe Hall it is sought to appropriate 0.016 second foot from Lower Addie Spring, tributary to Lead Canyon, to convey the water in a suitable pipe line to a camp and millsite situated in Saline Valley for mining, milling and domestic purposes.

Applications Completed, Advertised and Protested.

Applications 4932, 5119 and 5370 were 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 were set for a public hearing at the Court Room in the Court House of Inyo County in Independence, California, at 11:00 o'clock A.M. June 29, 1927. Of this hearing applicants and protestants were duly notified.

Applications 5261 and 5289 were not completed, but owing to the fact that the physical features proposed in each project either directly affected, or might be affected by the consummation of the projects proposed under Application 4932, 5119 and 5370 a simultaneous notice including the said applications 5261 and 5289 together with that sent for Applications 4932, 5119 and 5370 was duly sent to all applicants and protestants herein included informing said parties that the said Application 5261 and 5289 would be considered at the hearing held at the Court Room in the Court House of Inyo County in Independence, at 11:00 o'clock A.M. June 29, 1927. By mutual consent of the parties present

at this hearing Applications 5261 and 5289 were included for consideration therein.  
(See transcript Page 37).

Appearances were made in behalf of all applicants and protestants.

Consideration and Stipulated Solution of Protests.

The protest of M. Q. Watterson to Application 4932 on Upper Addie Spring (protest not referring to Lower Addie Spring) was filed July 12, 1926. It is based upon a claim of right to divert and use water from Upper Addie Spring under License 310 as issued on December 18, 1923 by the Division of Water Rights to the Inyo Bunker Hill Mines Company, which license was later assigned to M. Q. Watterson on June 11, 1925. This license confirms a right to divert and use a quantity of water not to exceed 13,000 gallons per day throughout the entire year for mining and domestic purposes in connection with mining operations at the Bunker Hill mines situated on the northern slope of Saline Valley.

The protest of M. Q. Watterson was dissolved by a mutual agreement between G. W. Peer and M. Q. Watterson, the latter being represented by his agent Howard R. Link, (see Page 16 of transcript) whereby the applicant, G. W. Peer would recognize the validity of the prior right for continued use of water under License 310 and would divert water from the same source, namely Upper Addie Spring, subject to that said prior right and whereby Howard R. Link would retract his attempt to have reinstated cancelled Application 4708 as filed before the Division of Water Rights on July 20, 1925, in the name of M. Ryer, (by virtue of which Howard R. Link was protesting Application 5119 of G. W. Peer on Lower Lead Canyon Spring) and that Howard R. Link's protest to Application 5119 would be withdrawn. It was the intent of both parties of this stipulation (see Page 17 of transcript) that the Division of Water Rights should be guided accordingly in whatever pertinent future action is taken on these applications.

The protests to Applications 4932 and 5119 as made by M. Q. Watterson are therefore dissolved leaving this Division clear to approve Application 4932

to appropriate water from Upper and Lower Addie Springs subject to the prior vested right confirmed by License 310 to Upper Addie Spring and to approve Application 5119 to appropriate water from Lower Lead Canyon Springs.

The protests of G. W. Peer to Applications 5289 and 5370 on Lower Lead Canyon Springs and Lower Addie Springs, respectively, were filed April 25, 1927 and June 29, 1927, respectively. They are based upon claims of prior rights initiated by Applications 4932 and 5119 and upon a contention that there would be no unappropriated water available subsequent to the complete satisfaction of amounts proposed to be appropriated under the latter applications.

As stated above Application 5261 by J. C. Baxter has not been completed but was included in consideration in this hearing by mutual consent of the parties present. There having been no protest to this application by the parties present this application should be completed in the usual manner and duly advertised. If not protested the usual course of procedure of approval of the application is in order.

#### Water Requirements of Applicants and Availability of Supply.

It is planned by G. W. Peer to install a 100 ton crushing mill for which all of the water available from Upper and Lower Addie Springs and from Lower Lead Canyon, in an amount not to exceed 0.25 second foot, will be necessary for continuous operation. It is the opinion of this Division that any wasteful practices in utilizing the precious waters of these springs can not be tolerated and it will be expected that conserving devices will be installed to husband these waters used in milling processes.

To satisfy the amounts sought for by G. W. Peer investigation by Engineer Ingerson shows flowing from the springs in question, as found on May 3rd to 6th, 1927, the following amounts:

Upper Addie Spring . . . . .	0.09 sec. ft.
Lower Addie Spring . . . . .	0.06 sec. ft.
Lower Lead Canyon Spring . . . . .	0.075 sec. ft.
North Paiute Springs . . . . .	0.07 sec. ft.

The amount to which the G. W. Peer appropriation would be subject is 13,000 gallons per day or its equivalent of 0.02 second foot. In the amended Application 4932 received June 22, 1927, it is sought to appropriate 0.13 second foot from Upper Addie Spring and 0.06 second foot from Lower Addie Spring; and in amended Application 5119 received June 22, 1927 it is sought to appropriate 0.06 second foot from Lower Lead Canyon Spring, thus making the above stated total of 0.25 second foot.

On July 16 and 17, 1917 an inspection of the project under Application 389 was made by Edward Hyatt, Jr., for this Division. The inspection included a visit to Addie Canyon. The report of this inspection shows that there was a flow of 8 miners inches (being equivalent to 0.20 second foot) in Upper Addie Spring. This Division is aware of the variable conditions of flow from springs in these parts and it therefore appears entirely reasonable that there would be a total flow from Upper Addie Spring of 0.15 second foot during some period of each year sufficient to satisfy both the amount of the prior vested rights and the amount applied for by G. W. Peer.

As for Application 5289 and 5370 on Lower Lead Canyon Springs and Lower Addie Springs respectively, there would not be sufficient unappropriated water available in the sources during such time that water may be diverted and beneficially used by G. W. Peer to satisfy the amounts applied for in said application. On the other hand, the said applications appear to have been filed in good faith, with plans in hand to proceed with a legitimate mining development, and as such, these two applications may be held pending in order to determine whether the applicant, Peer, completes his project in accordance with the terms of his permits. (See transcript Page 25). It is desired that the procedure of completing Applications 5289 and 5370 be carried through as far as possible toward the status of readiness for approval.

Considering the available supply in North Paiute Spring to satisfy the proposed appropriation under Application 5261 this Division finds that the amount of water flowing is slightly in excess of the amount applied for; therefore approval of this application in accordance with the conditions of previous considerations set forth herein is in order.

Consideration of Public Water Reserve.

This Division finds that the area contiguous to the spring herein considered and designated as Lower Addie Spring, by proclamation of the president of the United States of America, has been set aside as a portion of Public Water Reserve No. 13, as of order of December 1, 1913. This order of withdrawal bars this Division from approving any applications to appropriate the waters of such designated springs unless the land whereon such springs are situated is first clear-listed/<sup>or access is obtained</sup> in accordance with the provisions of Circular 1028 of the United States Land Office.

Inasmuch as the respective applicants for Application 4932 and for Application 5370 have both initiated proceedings with the United States Land Office to be permitted access to Lower Addie Spring and further, since this Division is desirous of providing ways whereby the waters in the withdrawal site may be made more accessible to the traveling public, this Division will hold in abeyance these filings or portions of filings referring to Lower Addie Springs for a sufficient time to determine whether or not the respective applicants can show evidence of a right of access to said spring. ←

Inasmuch as Upper Addie Spring and Lower Lead Canyon Spring are both situated within the boundaries of the Inyo National Forest, access thereto is not affected by any federal withdrawal order.

General Consideration of Diligence Required.

In view of the subsequent applications on Lower Addie Spring and Lower Lead Canyon Spring this Division believes that a very strict showing of diligence

will be required on the part of prior appropriators as hereinabove considered. It is to be expected that every reasonable effort will be made to complete the project proposed by the prior applicant within the time allowed in the permit and in case the said prior applicant finds that the project cannot be completed in accordance with the terms of his permits, only a substantial showing of progress will be considered as sufficient reason for favorable action.

O R D E R

Applications 4932, 5119, 5261, 5289 and 5370 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed, a field investigation having been made, a public hearing having been held, and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 4932 be now approved insofar as the said application relates to Upper Addie Spring and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and further, that action by this Division on said application be held in abeyance insofar as it relates to Lower Addie Spring, pending further order in the matter; and

IT IS FURTHER ORDERED that Application 5119 be now approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate; and

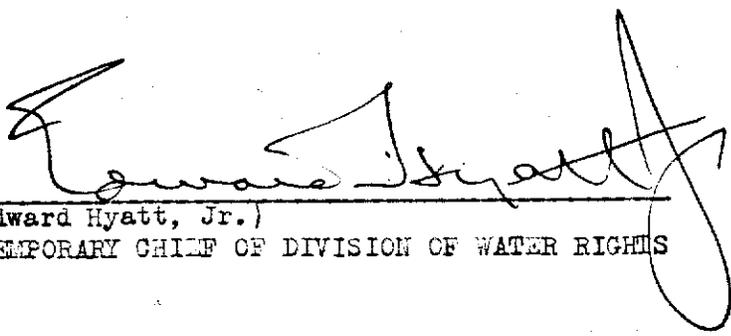
IT IS FURTHER ORDERED that Application 5261 be completed and advertised as required by the Water Commission Act and the Rules and Regulations of the Division of Water Rights and that at the expiration of the advertising period if no protests are received the said application be approved and a permit granted to the applicant subject to such of the usual terms and conditions as may be appropriate; and

IT IS FURTHER ORDERED that it be required of applicants under Applications 5289 and 5370 to complete said applications as required under the Water Commission Act and the Rules and Regulations of the Division of Water Rights, and that thereafter until further order is entered further action upon said applications by the Division of Water Rights be held in abeyance pending development of the projects proposed under Applications 4932 and 5119; and

IT IS FURTHER ORDERED that each of the permits granted in accordance with the above orders shall be so granted subject also to the following special terms and provisions, to-wit:

"Insofar as the waters of this source have become dedicated to public use the right of the public to the use thereof shall remain unabridged by the issuance of this permit and at a point convenient of access facilities shall be provided and maintained to allow free use of water for domestic and stock purposes by the public".

Dated at Sacramento, California, this 12th day of September , 1927.

  
Edward Hyatt, Jr.  
TEMPORARY CHIEF OF DIVISION OF WATER RIGHTS

DM:MP