

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

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In the Matter of Application 6714 of Mary Frances Bird  
to Appropriate from Ruby Springs Tributary to  
Mojave Desert in San Bernardino County for  
Irrigation and Domestic Purposes.

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DECISION A. 6714 D-320

Decided

*June 8, 1932*

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APPEARANCES AT HEARING HELD AT SAN BERNARDINO, APRIL 28, 1932

For Applicant

Mary Frances Bird

Donald M. Baker

For Protestant

F. M. Quiroz

Albert D. Trujillo

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 6714

Application 6714 was filed on June 30, 1930, by Mary Frances Bird.

It proposes an appropriation of 0.25 of a cubic foot per second throughout the entire year from Ruby Springs, tributary to the Mojave Desert in San Bernardino County for irrigation purposes on 20 acres of land within SE $\frac{1}{4}$  of NW $\frac{1}{4}$  Section 29, T 4 N, R 1 W, S.B.B.&M. and domestic purposes including household uses, garden irrigation and stock watering within the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of said Section 29. The point of diversion is described as being within

the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 5, T 3 N, R 1 W, S.B.P.2M. The application was protested by F. M. Quiroz.

#### PROTEST

F. M. Quiroz claims that Ruby Spring is located on property owned by him and acquired from David H. Brinkerhoff by deed dated June 20, 1924; that no permission has been given anyone to enter upon the premises or use the water; that every year since acquiring the springs he has used practically all of the water for domestic and mining purposes and that no water is available for the proposed appropriation under Application 6714.

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

Application 6714 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 April 28, 1932, at 9:30 o'clock A.M. in Council Chamber, City Hall, San Bernardino, California. Of this hearing applicant and protestant were duly notified.

#### HISTORY

It appears from correspondence on file with this office (see letter from office to J. F. Wheat dated January 26, 1921) that water from Ruby Springs may have been used by N. L. Breckenridge and associates as early as the year 1912, although there was no testimony presented at the hearing to this effect.

On November 14, 1914, the Ruby Millsite was located by Breckenridge and his associates.

On December 10, 1914, a notice of appropriation was signed and posted by N. L. Breckenridge and recorded on January 22, 1915, in the official

records of San Bernardino County claiming five miners inches of water (measured under a four inch pressure) to be diverted from a spring in Ruby Canyon for irrigation and domestic use and mining purposes at a ten stamp mill located approximately 1700 feet below the spring.

On June 24, 1924, there was recorded in the official records of San Bernardino County a quit claim/<sup>deed</sup>purporting to convey from David H. Prinkert-hoff and N. L. Breckenridge to F. M. Quiroz, all their right, title and interest in the "Ruby Mill Site" including water from Ruby Spring.

By executive order of the President of the United States dated April 17, 1926, a blanket public water reserve No. 107 was created for the purpose of safeguarding the rapidly diminishing number of springs and water holes upon the public domain which had in the past been used by the public or which might in the future be needed for such purposes. Ruby Springs apparently were included in this reserve.

On July 5, 1928, Mary Frances Bird (then Mary Frances Bales) filed Application 5971 to appropriate from Ruby Springs, which application was cancelled on April 21, 1930, for failure to complete. The application was protested by F. M. Quiroz who alleged in effect that the springs were situated on his private property and for this reason applicant had not acquired right of access. The cancellation of Application 5971 appeared to have been in order at the time as repeated efforts on the part of this office to obtain a showing from the applicant that progress was being made toward securing the necessary right of access met with little success.

Subsequent to the cancellation of Application 5971, Mrs. Bird resumed activity in the matter of ascertaining whether or not the springs were on the public domain and being convinced that they were, filed Application 6714 on June 30, 1930, and proceeded to take the necessary steps to secure

right of access from the Department of the Interior. The right of way application was approved by the Department on July 13, 1931, and Application 6714 is now before this office for consideration.

#### PHYSIOGRAPHY AND HYDROGRAPHY

Ruby Springs, the source of the proposed appropriation, are located on the floor of Ruby Canyon, which canyon is a steep and narrow ravine, extending northerly from the San Bernardino Mountains to the sandy shelf along the southerly rim of the Mojave Desert.

The water appearing on the surface at Ruby Springs is the first indication of a permanent water supply in Ruby Canyon and traces of water flowing from the springs are indicated nearly 900 feet below the springs. This water supplies a growth of willows, thornbushes and manzanitas at and below the spring. Above the spring there is little vegetation.

In the immediate vicinity of Ruby Springs there is a partly submerged wooden box or trough 2.5 feet wide, 4.5 feet long and 2.0 feet deep into which water is collected from the springs. Taking out from the box is a ten foot length of 2 inch diameter pipe which appears to be a portion of the original pipe line which conveyed the water to the mill site.

About 1165 feet below the springs there are the foundations of a stamp mill which indicate that at one time a stamp mill was in operation in that locality but which is now abandoned. About 625 feet further down the canyon there is a small cabin constructed of corrugated tin placed over a wooden frame which is at times occupied by F. M. Quiroz and his men.

#### FIELD INVESTIGATION BY DIVISION

On May 7, 1932, an engineer of the Division, under instructions from this office, made a field investigation for the purpose of ascertaining the present physical conditions at the springs.

He found the conditions to be as stated above and determined the flow of the springs to be 0.0134 of a cubic foot per second. He reported that the Angelina Mining Claims 1 to 4 inclusive, upon which F. M. Quiroz has filed lay over a "hog-back", a mile or more to the southeast of the springs and apparently have no connection therewith. Fresh tracks on the trails leading to the springs indicated that stock had recently been watered thereat.

The road leading to the springs from the cabin was in good condition except for the presence of boulders which had been dislodged from the upper side of the cut. Apparently the road had not been used for automobile travel for some time.

It was definitely determined that the springs were not situated on the property of F. M. Quiroz but were located on the public domain some 1065 feet distant from the nearest boundary of the old mill site.

USE OF WATER BY PROTESTANT AND HIS  
PREDECESSORS IN INTEREST

Although correspondence on file with this office indicates that use of water was made by Ereckenridge and his associates prior to the effective date of the Water Commission Act no testimony was presented at the hearing to that effect, nor was any testimony presented relative to the date that the mill was constructed except that it appears the location notice of the mill site was dated November 14, 1914.

Apparently protestant bases his entire claim of right upon a notice posted by N. L. Breckenridge on December 10, 1914, and recorded 43 days later. As the notice was not recorded within the 10 days provided by the law the right so initiated would be invalid and therefore any right Ereckenridge might have had was limited to the amount of water actually

diverted prior to December 19, 1914, and subsequently applied to beneficial use. This amount of water, if any, is not of record.

The testimony presented at the hearing indicated water was used by Brinkerhoff and Breckenridge for milling and domestic purposes until about 1924; the mill was then abandoned, the machinery sold and the mill site together with their alleged water right, conveyed to Mr. Quiroz by deed recorded June 24, 1924.

The mill equipment was removed from the mill site shortly after the transfer of the property and nothing remains except the foundations. Even the pipe line leading from the spring to the mill site and cabin was removed four or five years ago and has never been replaced.

The record indicates that since protestant took over the property he has been on the premises four or five times a year with three other men. The total time spent at the cabin each year averages about a month and water is conveyed to the cabin from the spring in 3 gallon buckets, five or six bucketsfull being used per day, or about 18 gallons. No water has been used by protestant for mining or irrigation purposes.

Since the mill was abandoned Mr. Quiroz has received compensation from one W. E. Hitchcock in return for allowing him to water on an average about 40 head of stock from about November 1 to about June 1 of each year. The water so consumed together with that used for domestic purposes would probably not exceed 0.001 of a cubic foot per second or less than 10% of the amount of water which was flowing from the spring at the time of the investigation.

The waters of the spring are used by campers, hunters and prospectors who visit that locality and it therefore appears that a certain amount of water is in effect dedicated to public use.

UNAPPROPRIATED WATER IN RUBY SPRINGS

It is a moot question as to whether or not Mr. Quiroz has a private right, inasmuch as it has not been definitely shown that water was used by his predecessors in interest prior to the effective date of the Water Commission Act. Certainly he can not lay claim to a water right based upon the posting of a notice and recording it 43 days later. It appears however that if he has not a private right he has a right to use it the same as any individual may use it on the public domain as one of the general public and we believe that his right as such should not be abridged.

Mrs. Bird stated at the hearing that she intended to construct a small trough at the spring equipped with an automatic valve for the benefit of game and birds. We are convinced that not only should the trough be constructed for such purposes but also for the use of the general public including Mr. Quiroz and that he should be allowed to use water to the extent of his past use. To this end a special clause should be incorporated in the permit.

It has been shown above that the amount of water used by protestant Quiroz is a small percentage of the total flow from the spring and it is our opinion that there is unappropriated water in Ruby Springs available for appropriation.

Although the amount of water measured by the engineer who investigated the project on May 7, 1932, is less than 6% of the amount of water which applicant seeks to appropriate, it is believed that with proper development the flow from the spring may be materially increased and the water which is now lost by evaporation and transpiration put to beneficial use.

CONCLUSION

The purposes to which applicant proposes to put the water are useful and beneficial; applicant has obtained the necessary right of access to the proposed source of diversion and there is sufficient unappropriated water in the source to justify the approval of Application 6714. It is therefore the opinion of this office that Application 6714 should be approved subject to the usual terms and conditions and a special term or condition to the effect that at a point convenient of access facilities shall be provided and maintained to allow free use of water for domestic and stock watering purposes by the public.

A letter of transmittal should accompany the permit directing attention to the fact that it appears that a certain amount of water has become dedicated to the public use for domestic and stock watering purposes and that the issuance of the permit should not be construed as depriving Mr. Quiroz and others of the water which they have been accustomed to use.

ORDER

Application 6714 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 6714 be approved and that a permit be granted subject to such of the usual terms and conditions as may be appropriate and subject also to a special term or condition as follows, 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 unbridged 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."

WITNESS my hand and the seal of the Department of Public Works of the State of California, this *8th* day of *June*, 1932.

EDWARD HYATT, State Engineer

By *Harold C. ...*  
Deputy

RES:MP

