

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
BEFORE THE STATE ENGINEER AND
CHIEF OF THE DIVISION OF WATER RESOURCES

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In the Matter of Application 14221 by R. E. Kitching and S. E. Kitching
to Appropriate Water from Last Chance Springs in Inyo County for Mining
and Domestic Purposes.

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Decision A. 14221 D. 757

Decided September 22, 1952

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In Attendance at Investigation Conducted by the Division of Water Resources
in Connection with the Proposed Appropriation on April 11, 12 and 13, 1952:

R. E. Kitching)	Applicants
S. E. Kitching)	
Wallace Collins	Applicants' Attorney
S. C. McBride	Applicants' representative
Michael Houston	Applicants' representative
Stewart C. Bedell	Protestant
Burt Griffith	Protestant
Chum Crocker	Protestants' companion
Willis Smith	Protestants' Attorney
J. J. Heacock	Senior Hydraulic Engineer, Division of Water Resources, Department of Public Works, Representing the State Engineer.

Also present: E. F. Pohl, Junior Hydraulic Engineer, Division of Water Resources.

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OPINION

General Description of the Project

The springs from which it is sought to appropriate are four in number. Their designations and locations and the amounts which the applicants seek to appropriate from each are as follows:

<u>Designation</u>	<u>Location*</u>	<u>Amount (cfs)</u>
Camp Spring	SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2	0.30
Spring No. 2	SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2	0.069
Spring No. 3	NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2	0.067
Spring No. 4	NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1	<u>0.066</u>
Total		0.50

*All springs are within T8S R39E, MDB&M.

A catch basin is to be provided near each spring into which the water from that spring will pass by gravity. The water from the 4 catch basins is to be piped to a concrete collecting tank, 10 feet in diameter by 6 feet high, from which tank it will pass through some 37,000 feet of 4 inch diameter wood stave pipe, assisted by a booster pump, 250 gallons per minute in capacity, to a 1,000-gallon galvanized iron tank located at or near the place of use. The water is to be used for domestic purposes at 8 houses to be occupied by a total of 70 men; also for mining purposes - mill wash, flotation etc. - at the "Inyo Soil Sulphur Company" property, shown on the application map as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T8S R39E, MDB&M, where sulphur products are to be processed.

Protest

Stewart C. Bedell, Bert Griff, D. S. Hicks and G. F. Hicks protest the application jointly. They claim already to have diverted from the four springs from which the applicant now seeks to appropriate and represent that they have a riparian right so to do. Their protest contains the following statements:

"All of the water from said spring or springs is required for the purpose of working and developing those certain claims owned by us and described as the Gold Bug Group of mining claims - - - - formerly known and described as the Last Chance Group of Mining Claims - - - -"

* * * * *

"Water was first used approximately twenty years prior to the application - - - by protestants and their predecessors in interest and has during the period of twenty years last past been used intermittently during the summer months from April to October of each year for domestic purposes and for the working and development of the mining claims aforesaid. Approximately the entire flow was and is used for the purposes aforesaid. It is the intention of protestants to install cyanide tanks which will require the entire flow of said springs."

The protest contains additional statements as follows:

- "1. All water at the Last Chance Spring is necessary for the purpose of working and development of the mining claims owned by us and hereinbefore described.
2. Appropriation of water from this spring as requested in the application - - - - would wholly prevent the further development and the working of the mining claims aforesaid.
3. It is our desire to work and further develop the mining claims, and for that reason we must protest any appropriation of water from said spring since such an appropriation would destroy any and all value of the mining claims herein described."

Answer

The answer contains a statement to the effect that Applicant R. E. Kitching, accompanied by Messrs. Collins, McBride and Houston, spent April 22 and 23, 1951 at and about Last Chance Springs studying terrain and water possibilities, and that he saw no evidence at that time of mining activity, assessment work or human habitation. The applicants then state as their contention and belief:

"That protestants cannot substantiate their need for water, nor have they ever used water from the springs from April to October of any one year, nor have they had continuous use of water over a period of time, to claim riparian rights;

" - - - -. The 'Proof of Labor' filed in May, 1951 is not valid because the one day's bull-dozer work done - - - - cannot be connected with the Last Chance Springs except by trail, as a road built in from this direction would be prohibitive as to cost. - - - -.

" - - - - - Sections 1 and 2, and 11 and 12 - - - were withdrawn from the Public Domain as a 'Public Water Reserve' No. 13, California No. 1, by Executive Order dated December 1, 1913. - - - - locations are not valid if filed after date of withdrawal from the Public Domain. Also riparian rights claimed after the year 1913 could not be valid for the same reason;

"That all lands thus set aside as Public Water Reserves are under the sovereignty of the State, which State may delegate it to corporations or individuals;

"That the only mine in the whole of the region that could benefit from the water of the springs is the Sulphur Mine in the Last Chance Range - - - -"

The applicants' answer is accompanied by 3 depositions. Of these a deposition by H. P. Gower states:

"That affiant is a surveyor and engineer employed for 25 years by the Pacific Coast Borax Company in many phases of their mining activities;

"That on March 14, 1951 affiant - - - went to Last Chance Springs - - - and inspected and measured the water - - - and of the use of the water - - -.

"That there was no evidence of mining activity and no evidence of human habitation, nor did there appear to have been for many years previously, and - - - affiant did not see any ledges or veins of valuable minerals.

"That in trying to approach the area by roads - - - affiant was unable to traverse such roads by automobile closer than a distance of 5 or 6 miles from the spring on account of ravines and washes which showed that said roads had not been used for many years."

A deposition by Wallace Collins is to the effect that he is an attorney, that he has had experience in mining, that he visited and inspected Last Chance Springs on March 14, April 1 and April 22 and 23, / 1951. The deposition states with reference to his inspection:

"That there was no evidence of mining activity and no evidence of human habitation, nor did there appear to have been for many years previously, and - - - affiant could not find any ledges or veins of minerals - - -."

A deposition by Michael Houston states, in part:

"That on April 21 - - - affiant helped measure distances, between the springs and otherwise to inspect the terrain for the laying of pipes;

"That affiant saw several old monuments in the region, that the monuments contained no names; that an old, shallow shaft was dug, abandoned, with an old pick with cracked and weathered handle remained to tell that it was abandoned many years before;

"That summer cloud-bursts had washed gulleys with huge stones and granite boulders; that the region is completely volcanic; that no sign of life was discerned; that not even a tin can could be located to give evidence of former occupancy;

"That affiant and the others tried to get to the springs from Lida and were told that the region had been impassable for years and that the only way we could get in was to travel by horseback or afoot. This was true;

"That affiant went in again to post the springs - - - and things were not changed; that no mining for perhaps 20 years or more had been done; that only the short cave remained to tell the story."

Field Investigation

The applicants and the protestants having stipulated to an informal hearing as provided for in Section 733(b) of the California Administrative Code, Title 23, Waters, a field investigation was conducted at the vicinity of the proposed appropriation on April 11, 12 and 13, 1952 by an engineer of the Division. The applicants and the protestants were present or represented during the investigation.

Records Relied Upon

Application 14221 and all data and information on file therewith.

Discussion

According to the report of the field investigation Last Chance

Springs lie on the easterly slopes of the Last Chance Mountains, well above the thread of Death Valley Wash, Camp Spring and Springs No. 2 and No. 3 are at about the same elevation and about 500 feet above the bottom of the wash and are apparently brought to the surface by a dike or fault parallel to the mountain range, and Spring No. 4 is at the confluence of 2 draws below the other 3 springs and about 300 feet lower in elevation. Camp Spring, the report states, is a side hill cienega, about 2 acres in extent, undeveloped but with some seepage in evidence over most of the area, the seepage aggregating an estimated 3 gallons per minute. Spring No. 2 is said to issue from crevices of decomposed granite, to have been partially developed by a small excavation in the largest crevice and the installation of a 10-foot length of 2 $\frac{1}{2}$ -inch pipe for convenience in collecting water, to have been used at one time as a source of domestic supply for a mining camp, and now to serve occasional visitors to the area. According to the report about 1 gallon per minute was issuing from the pipe at the time of the investigation and about the same amount was issuing from nearby cracks. The report describes Spring No. 3 as a side-hill cienega area about 20 feet by 50 feet in size, and undeveloped. It states that a small trickle of water was escaping and that probably a flow of one-half gallon per minute could be developed. Spring No. 4, the report states, was yielding 2 gallons per minute and has been developed somewhat, improvements including a short trench and about 40 feet of 1 $\frac{1}{2}$ -inch pipe leading to a circular redwood watering trough. According to the report the combined flow of the springs, in part estimated, is of the order of about 8 gallons per minute.

Use by the protestants, according to the same report, is limited to domestic use by men doing assessment work on the claims, that use during 1951 having amounted to about 10 man days at 5 gallons per man per day, or some 50 gallons in all. With further reference to the protestants the report states:

"The protestants claim to have valid mining claims covering the entire area of the springs, and had duplicate copies of notices of assessment work on the claims for the past several years. Mr. Bedell stated that the last ore was hauled from the mines in 1937, but the assessment work had been kept up."

* * * *

"The protestants allege control of the area around the springs through possession of mineral claims - - - and through holding the claims, allege that they have riparian rights."

With reference to the applicants, the report states:

"The applicant alleges that the lands in Sections 1, 2, 11 and 12 - - - were withdrawn by executive order in about 1932, thereby destroying the riparian rights of the protestants and making the water subject to appropriation under State law."

The protestants' objections, based upon their alleged riparian right, appear insufficient to warrant denying the application. The protestants do not claim to be using, currently, all of the water that the springs produce. There is an implication that more extensive use has been made in the past than at present. Mention is made of hauling of ore as recently as 1937. Since that time the only use claimed is use incidental to assessment work. That use in 1951 according to the report of field investigation amounted altogether to about 50 gallons, a negligibly small quantity in comparison with the yield of the springs. While the protestants assert that all of the water that the springs produce is necessary for the working and developing of their claims, and that they desire to work and further develop said claims, it is an accepted principle that contemplated future use under a riparian right is not a bar to the approval of an application to appropriate. That principle is believed to govern in the matter at issue and the protest may therefore be dismissed as insufficient.

Summary and Conclusions

Unappropriated water exists in the sources from which it is sought to appropriate under Application 14221. The diversion of such water subject to existing rights in the manner proposed in that application will not injure the protestants. In the opinion of this office the reasons advanced by the protestants in urging the disapproval of Application 14221 are insufficient and the application should be approved subject to the usual terms and conditions.

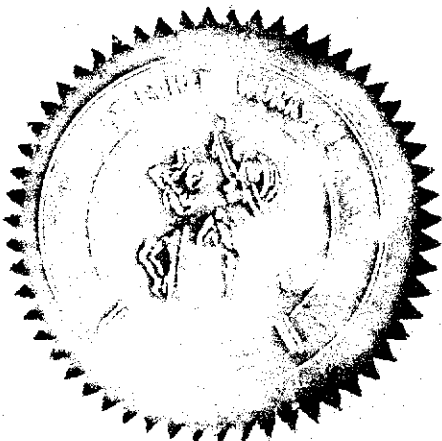
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ORDER

Application 14221 for a permit to appropriate water having been filed with the Division of Water Resources as above stated, a protest having been filed, a stipulated hearing having been held and the State Engineer now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 14221 be approved and that a permit be issued to the applicants subject to such of the usual terms and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 22nd day of September 1952.



A. D. Edmonston

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State Engineer