

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the matter of Application 16413) Source: 2 unnamed springs
by Frederick H. and Daniel A. Giles) County: Sierra

Decision No. D 915

Decided: December 4, 1958

In attendance at investigation conducted by the
State Water Rights Board on September 5, 1957:

Frederick H. Giles	Applicant
Daniel A. Giles	Applicant
Michael Connell	Representing Protestant
J. J. Heacock) Representing State) Water Rights Board
Senior Hydraulic Engineer	
S. L. Andrews) Associate Hydraulic Engineer)
Associate Hydraulic Engineer	

DECISION

Substance of the Application

Application 16413 was filed on June 13, 1955, for a permit to appropriate 0.10 cubic foot per second by direct diversion to be diverted, year-round, from two unnamed springs

tributary to Kanaka Creek in Sierra County (0.05 cubic foot per second to be diverted from each spring) for mining and domestic purposes. Kanaka Creek is tributary to Middle Yuba River. The points of diversion are within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 3, T18N, R10E, MDB&M. The diversion works will consist of spring boxes and the water will be conveyed by gravity to the place of use by pipe lines of adequate size. The place of use is stated to be the General Sherman Mining property located within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 34, T19N, R10E; NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 3; and NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 4, T18N, R10E, MDB&M. The applicants allege control of both the points of diversion and place of use by virtue of valid mining claims. The water will be used for mining and domestic purposes, mining use will be for drilling and milling ore, and water used for mining purposes will flow into Kanaka Creek within SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 3, T18N, R10E, MDB&M.

Protests

Frank G. Finnegan protested the subject application as trustee under the will of John J. Connell, deceased, alleging that water from the two subject springs has been used for domestic purposes at two houses on the Connell property continuously since prior to December 19, 1914. The protestant states that the protest may be disregarded and dismissed if applicants' use is limited to water not used or needed by the protestant.

Answer

No answer to the protest has been submitted.

Field Investigation

The applicants and protestant, with the approval of the State Water Rights Board, stipulated to proceedings in lieu of hearing as provided for under Section 737 of the Board's rules and regulations and a field investigation was conducted on September 5, 1957, by J. J. Heacock and S. L. Andrews, engineers of the Board. The applicants were present or represented at the investigation.

Records Relied Upon

The records relied upon in support of this decision are Application 16413 and all relevant information on file therewith; with particular reference to the report of the field investigation of September 5, 1957, United States Geological Survey, Alleghany, California Quadrangle, 7½ minute series; Bulletin 141, Division of Mines, "Geologic Guidebook Along Highway 49 - Sierran Gold Belt", 1948.

Information Obtained by Field Investigation

According to the report of the field investigation, the springs are located on the southerly slope of a hill at an elevation of about 4,450 feet within the NW¼ of NW¼ of

Section 3, T18N, R10E, MDB&M. The springs were developed many years ago by short tunnels into the hillside and the entire production of the springs is being used for domestic purposes at two dwellings on the protestant's property. The applicants intend to increase the production of the springs by further development and represent that such increased flow will be appropriated under Application 16413.

The hill rises to an elevation of about 4900 feet 0.75 mile north of the proposed point of diversion. Springs at about the same elevation and from 0.25 to 0.75 mile easterly have been developed by like tunnels and have produced consistent flows of a magnitude of 30 to 60 gallons per minute for many years.

Plate 9 of Bulletin 141, Division of Mines, "Geologic Guidebook Along Highway 49--Sierran Gold Belt", 1948, shows that the predominate geologic formation overlying an extensive area above and northerly from the springs is andesite breccia and conglomerate. According to parties present at the investigation, the overlying material is porous and is underlaid by an impermeable blue clay stratum that impedes the downward movement of water below the andesite breccia thus causing a series of springs along the exposed contact. The springs at the proposed points of diversion appear to be slightly below the contact between the breccia and the clay. The producing tunnels referred to in the preceding paragraph are in about the same position relative to the blue clay stratum.

On November 27, 1957, the area was again visited by the investigating engineers. One of the applicants and Mr. C. A. Bennett, Superintendent of the Original Sixteen to One Mine, both stated that during October 1957, the area received about 11 inches of rainfall, but little, if any, runoff had occurred, thus indicating the porosity of the overlying andesite breccia cap.

Little or no information could be obtained from the field investigation as to the production of the springs. The investigation revealed that the springs are and have been serving the domestic requirements and limited irrigation at two residences of the protestant. However, it is further reported that the springs are located only a few feet and uphill from the main county road between the town of Alleghany and State Highway 49, that water was standing in the roadway ditch in a few locations in the vicinity of the spring but that no movement of surface water was observed in the ditch or at any point in the immediate vicinity.

Summary and Conclusions

The water sought to be appropriated under Application 16413 apparently originates from precipitation on an overlying cap of andesite breccia and conglomerate which is generally a porous material. The water percolates down through the cap material and is intercepted by a relatively impermeable stratum of blue clay which impedes the downward

percolation and causes the water to flow, under the force of gravity, laterally and appear as a series of springs which emerge in a nearly horizontal zone along the southerly mountain front, not only at the proposed point of diversion, but for a distance of at least three-quarters of a mile easterly.

The water which the applicants seek to develop in excess of the natural flow of the springs would be percolating water over which the Board has no jurisdiction. The procedure in the Water Code applies only to surface water and to subterranean streams flowing through known and definite channels (Water Code Section 1200). Necessarily that excludes percolating water. It may be that water in excess of that used on the protestant's property may be developed from the sources named in Application 16413. However, in view of the available information the Board finds that the sources of water sought thereunder do not come within its jurisdiction as defined by the Water Code and that the application should be denied for that reason.

ORDER

Application 16413 for a permit to appropriate unappropriated water having been filed, a protest having been received, applicant and protestant having stipulated to proceedings in lieu of hearing as provided under Section 737 of the

Board's rules, a field investigation having been made by the Board and said Board now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 16413 be, and the same is, hereby denied for the reason set forth in the preceding section of this decision.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Fresno, California, on this 4th day of December, 1958.

/s/ Henry Holsinger

Henry Holsinger, Chairman

/s/ W. P. Rowe

W. P. Rowe, Member

/s/ Ralph J. McGill

Ralph J. McGill, Member