

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

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In the Matter of Revocation of Permit 1289 Heretofore issued upon
Application 2280 of General Gold Point Mines, Inc., to Approp-
riate from Big Cienega in San Bernardino County for Agri-
cultural and Domestic Purposes, and Application 5658 of
Geneva Katherine Baxter to Appropriate from Scienaca
or Cinka Spring in San Bernardino County for
Irrigation and Domestic Purposes

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DECISION A. 2280, 5658 D- 236

Decided

Aug. 12, 1929

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APPEARANCES AT HEARING HELD AT San Bernardino, March 13, 1929.

For Applicant

Geneva Katherine Baxter

Donald M. Baker

For Permittee and Protestant

General Gold Point Mines, Inc.

Ben. Harrison

EXAMINER: Harold Conkling, Chief of Division of Water Rights,
Department of Public Works, State of California.

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O P I N I O N

GENERAL FEATURES OF APPLICATION 5658

Application 5658 was filed September 8, 1927, by Geneva Katherine
Baxter. It proposes an appropriation of 2.0 cubic feet per second of direct
diversion throughout the entire year from "Scienaca" or "Cinka" Spring, tribu-
tary of Furnace Canyon watershed in San Bernardino County for irrigation and
domestic purposes on 160 acres within the SW $\frac{1}{4}$ of Section 26, T 4 N, R 1 W,
S.B.B. & M. The spring is described as being located within the SE $\frac{1}{2}$ of SE $\frac{1}{2}$
of Section 13, T 3 N, R 1 W, S.B.B. & M. The application was protested by

the General Gold Point, Mines, Inc.

PROTEST

The protestant General Gold Point Mines, Inc., alleges in effect that the spring or cienega from which applicant proposes to appropriate is the same source from which it has the privilege of diverting under Application 2280, Permit 1289, and that any diversion which applicant may make would deprive it of water to which it is lawfully entitled.

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

Application 5658 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 accordance with Section 1a of the Water Commission Act on March 13, 1929, at 2:00 o'clock P.M. in the Council Chamber of the City Hall, San Bernardino, California.

As the diligence of the General Gold Point Mines, Inc., in the consummation of its project had been questioned by the applicant, Application 2280, Permit 1289, was also set for hearing at the same time and place to afford the permittee an opportunity to appear and show cause why Permit 1289 should not be revoked for failure to comply with the terms thereof.

HISTORY

From testimony presented at the hearing and information on file with this office it appears that in the early part of 1913, prior to the effective date of the Water Commission Act, one J. S. Garrison initiated a right to the use of water from the cienega. Water was used continuously by Mr. Garrison up to the time he sold the ranch at which time about 300 fruit trees and some garden truck had been irrigated. The present system, with the exception of certain replacements and maintenance work, was installed by

him. In 1919 the ranch was sold to a Captain Short who died a short time after he acquired the property and Mrs. Fetters succeeded to his interests. On March 25, 1921, Mr. Jay M. Fetters, with a view toward developing and using more water from the cienega, filed Application 2280 with this office. Before the application was approved it was assigned to W. J. Baker.

On January 22, 1923, a permit was issued in approval of Application 2280 allowing the permittee the privilege of appropriating for agricultural and domestic purposes 2.0 cubic feet per second from "Big Cienega" in San Bernardino County throughout the entire year. The place of use was described as being 150 acres within the SE $\frac{1}{4}$ of Section 1 and 150 acres within the NE $\frac{1}{4}$ of Section 12, T 3 N, R 1 W, S.B.B. & M. It was proposed to construct about 4100 feet of pipe and flume from the cienega to the place of use at a cost of some \$600. According to the terms of the permit actual construction was to have commenced on or before May 1, 1923, to have been completed on or before July 1, 1925, and the water was to have been applied to complete beneficial use on or before July 1, 1926.

On February 1, 1924 permittee reported that some \$2000 had been expended on the construction work consisting of 1/4 mile of open ditch, the construction of a 60' x 80' x 6' reservoir and the laying of 1200 feet of 2" pipe and that during 1923, 10 acres of land had been irrigated and water used for stock and domestic purposes.

On January 22, 1925, it was reported that about 6 acres of land had been irrigated during 1924 and that it had been difficult to keep the trees and alfalfa alive owing to the deficiency in water supply. Apparently no further construction work had been done.

On February 28, 1925 copies of assignment from W. J. Baker to General Mining and Milling Corporation and from General Mining and Milling Corporation to General Gold Point Mines, Inc. were filed in this office.

On February 2, 1926, permittee reported that some trenching had been done and a study was being made to determine the size of flume and pipe line necessary to convey the water from the cienega to the place of use. It was reported that about 6 acres were irrigated in 1925.

On July 22, 1926, the project was inspected by an engineer of this office who reported that construction work had been partially completed and consisted of the excavation of about 300 feet of trenches at the cienega in an effort to bring the water to a common point, the construction of a small earthen dam across a natural water course and the installation of about 300 feet of 2" pipe from the dam to the regulatory reservoir formed by an earthen dam 80 feet in length, 5 to 8 feet high, 10 feet wide on the bottom and 3 feet wide at the top and the laying of 725 feet of 2" pipe from the regulatory reservoir to the place of use. The total expenditure was stated as being approximately \$1200. The engineer reported that water had been used for the irrigation of 5 acres of orchard and alfalfa within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 12, T 3 N, R 1 W, S.B.B. & M. The permittee informed the engineer at the time of the inspection that it was proposed to develop more water, place additional pipe and increase the irrigated area. Considerable land had been cleared and ready for cultivation and it was estimated that it would require about two years to complete the project.

On January 24, 1927, an extension of time until November 1, 1928, was granted within which to complete construction work and completely apply the water to beneficial use.

On January 14, 1928, permittee reported that 5 acres of land had been irrigated during 1927 and more fruit trees might be planted upon ground which had already been cleared. Apparently no further construction work had been done.

On November 1, 1928, this office was informed that the methods heretofore used in developing the water had been unsatisfactory and the permittee had decided to remove all the soft or boggy portion of the cienega and run concrete wings out thereby diverting all the water into one source and then to construct a concrete dam with a screened outlet and overflow leading into a concrete reservoir from which the water would be conveyed to the place of use. To carry out this program permittee had decided to build a road into the district in order to use a gasoline power shovel for the excavation and hauling in of material. Permittee stated that this road had been under construction for several months and as the undertaking was greater than it had anticipated construction work had not been completed.

FIELD INVESTIGATION BY THE DIVISION OF WATER RIGHTS

On June 26, 1929, subsequent to the hearing a field inspection was made by an engineer of this office who reported that there were virtually three points of diversion involved namely Big Cienega Springs from which Mrs. Baxter seeks to appropriate, Big Cienega Swamp which is the point of diversion described in Application 2280, Permit 1289, of the General Gold Point Mines, Inc. and the lower spring from which the mining company diverts directly.

The Big Cienega Springs consist of scattered seeps in the bed of the main canyon, along its sides and in small tributary gulches. Some of these seeps barely show moisture on the surface. In others the water drips or runs in small streams. Attempts have been made to concentrate the seepage by the excavating of shallow trenches, most of them having become obliterated. The water flows down the canyon to a point directly opposite the Big Cienega Swamp. The Big Cienega Swamp is about 800 feet distant down the canyon from the upper end of Big Cienega Springs and is about 250 feet lower in elevation.

It is located to the west of and adjacent to the main canyon. The swamp which is approximately 50 feet wide and 100 feet long is formed by a limestone dyke and the material which is about four feet deep and a solid mass of roots is saturated with water. There had evidently been some trenching done in the swamp but due to the character of the material the trenches soon disappear. Apparently the material is very difficult to excavate by hand and the contention of the General Gold Point Mines, Inc., that the work can be done more cheaply by power appears to have some merit.

A trench has been dug by the mines company along the lower edge of the swamp by means of which water is collected and caused to enter the canyon where it is commingled with the water which drains from the Big Cienega Springs above. At the time of the investigation the flow collected from the Big Cienega Springs and the swamp was found by measurement to be about 0.021 cubic foot per second.

A short distance below this point where the water from the swamp unites with the water from Big Cienega Springs the water sinks into the bed of the canyon and completely disappears. About one-half mile down the canyon from the swamp and 750 feet lower in elevation water gushes from a small hole in the limestone designated above as the lower spring from which water is conveyed by 300 feet of 2" pipe to a small regulatory reservoir formed by an earthen dam across a depression in the hillside having a capacity of about 60,000 gallons. From the reservoir the water is conducted to the place of use by 725 feet of 2" pipe. The pipe lines which are in good condition have a capacity of about 0.10 cubic foot per second.

At the time of the investigation there was 0.031 cubic foot per second flowing at the lower spring an amount which is about fifty per cent

greater than the amount which had been measured at the point above.

The entire quantity of water thus diverted is used by the mining company for the irrigation of about 0.26 of an acre of alfalfa and about one acre of orchard consisting of 80 live fig, cherry, apple, almond and peach trees partly interplanted with alfalfa and grapes.

The alfalfa plants were at about one foot intervals and in fair condition. The stand is some twelve years old which would apparently account for the sparse growth. The trees, while they bore some evidence of having been abused by cattle and rabbits, were well leafed and apparently had been pruned in recent years. In general it may be said that they had the appearance of having received as much attention as the average mountain family orchard.

Mr. Simmons who has attended to the orchard for a number of years informed the engineer that the orchard had been irrigated continuously and that all the available water had been used, and the fact that all of the dead trees were on the outskirts of the orchard would appear to bear out the statements of the Mining Company that of late years the water had not been sufficient for more than the 1.26 acres now under irrigation.

The soil is composed of fine black soil loose and porous interspersed with small fragments of rocks and a duty of one cubic foot per second continuous flow to forty acres of land would not appear to be unreasonable.

AT LEAST A PORTION IF NOT ALL OF THE WATER WHICH
PROTESTANT HAS DIVERTED HAS ITS SOURCE FROM BIG
CIENEGA SPRINGS AND SWAMP.

Testimony presented at the hearing indicated that the protestant in order to convince itself that the waters which it was using were derived from the Big Cienega Springs and Swamp conducted a test by diverting the water collected at the lower end of the Swamp out of its natural channel for a period of two weeks. During this period the lower spring was practically dry and

upon turning the water back again to its natural channel the original flow was recovered. It therefore would appear that at least the greater portion if not all of the water diverted by the protestant is derived from the upper springs and it therefore may be considered that the protestant has in fact diverted water from these springs although the natural underground channel has been utilized for conveyance purposes.

This fact would appear to be substantiated by the fact that the sources are in the same canyon and there are no immediate appearances of water on either side.

The fact that at the time of the investigation the flow was greater at the lower spring than at the lower end of the cienega where the measurement was made, would appear to be reasonable as no doubt considerable water sinks into the lime formation above the point of measurement.

AMOUNT OF DILIGENCE EXERCISED BY PERMITTEE
NOT SUFFICIENT TO JUSTIFY FURTHER EXTENSION

From the testimony presented at the hearing it appears that very little development has been made under Application 2280, Permit 1289. In the six and a half years since issuance of permit about 500 feet of shallow trenching has been made which apparently has been futile so far as development of additional water is concerned. While it appears that some work has been done in enlarging the reservoir and relaying a portion of the pipe line both of which were in existence at the time of the issuance of permit, this work was more in the nature of maintenance than of new construction. Since August 1928 permittee has constructed about $1\frac{1}{2}$ miles of road to the cienega for the purpose of transporting a power shovel to excavate the swamp to bedrock, but no excavation has been made other than the trenching described above.

The entire amount of work done toward developing the supply since 1925 may be said to have extended over a period of about four days work by two men and two Indian boys. This could hardly be termed as due diligence toward the consummation of an appropriative right and this office is of the opinion that insufficient diligence and cause has been shown for granting further extension.

It appears that water has been put to beneficial use by the General Gold Point Mines, Inc., to the extent of 0.031 cubic foot per second on 1.25 acres of land and while this duty is very low being approximately 1 second foot to 40 acres of land, considering the character of the soil and the high evaporation losses in that locality and the testimony to the effect that the area irrigated was limited to the available supply, it is the opinion of this office that a license should be issued to the General Gold Point Mines, Inc., for an amount of 0.031 cubic foot per second from about April 1st to about October 15th of each season and throughout the remainder of the year as may be required for domestic purposes.

THERE APPEARS TO BE A CERTAIN AMOUNT OF UNAPPROPRIATED
WATER AVAILABLE FOR USE OF APPLICANT

It appears entirely clear that with proper development at the cienega there would be water available for the use of the applicant Geneva Katherine Baxter over and above that to which the General Gold Point Mines, Inc., is entitled under its appropriation. While this amount is uncertain, the use proposed is a beneficial one and the applicant should be allowed an opportunity should she so desire to develop as much water as it is possible to develop up to the limit of her application expressly subject however to the rights heretofore described as vested under Application 2280, Permit 1289.

O R D E R

Application 5658 for a permit to appropriate water having heretofore been filed with the Division of Water Rights, as above stated, a protest having been received from the holder of Permit 1289 heretofore issued upon Application 2280, the holder of Application 5658 having entered a cross complaint charging lack of diligence on the part of the aforesaid protestant in completing its appropriation under Application 2280, a hearing having been held and the Division of Water Rights now being fully advised in the premises:

IT IS HEREBY ORDERED that no further extension be allowed within which to increase the use under said Application 2280, Permit 1289 and that a license be issued thereon confirming only those rights which have already vested, and

IT IS HEREBY FURTHER ORDERED that Application 5658 be approved subject to the usual terms and conditions and subject also to the following special terms and conditions to-wit:

"A right in and to the natural flow of Cienega or Cinka Spring has been established under Application 2280, Permit 1289 and the right of permittee herein is therefore limited to such waters as may be salvaged by reduction of the wetted surface area at the source."

Dated at Sacramento, California, this 12 day of August, 1929.

Harold Conkling
(Harold Conkling)
CHIEF OF DIVISION OF WATER RIGHTS

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