

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

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In the Matter of Application 7677 of R. P. Stine to  
Appropriate from an Unnamed Stream Tributary  
to Kern River in Kern County for  
Domestic Purposes.

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DECISION A. 7677 D - 362

Decided *September 8, 1934*

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APPEARANCES AT HEARING HELD AT SACRAMENTO, AUGUST 24, 1934.

For Applicant

R. P. Stine

No appearance

For Protestant

Mrs. Josephine E. Gunston

No appearance

**EXAMINER:** Everett N. Bryan, Supervising Hydraulic Engineer for  
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 7677

Application 7677 was filed by R. P. Stine on September 20, 1933.

It proposes an appropriation of 10 gallons per minute from an unnamed stream tributary to Kern River in Kern County to be diverted throughout the entire year for domestic purposes within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 3, the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 2 and the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 10, T 28 S, R 32 E, M.D.B.&M. The point of diversion is located within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 10, T 28 S, R 32 E, M.D.B.&M.

Filed by C. E.

The application was protested by Mrs. Josephine H. Gunston.

PROTEST

Mrs. Josephine H. Gunston claims prescriptive rights and rights to appropriate initiated prior to the effective date of the Water Commission Act and alleges in effect that the source of protestant's supply is actually at the "Jenny Lind Mine" and not an "unnamed spring" as described in Application 7677 and that should the application be approved it would result in depriving her of water to which she is entitled and which has been used for irrigation and domestic purposes.

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

Application 7677 was completed in accordance with the Water Commission Act and the requirements of 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 at Bakersfield on July 27, 1934, postponed to be convened at Bakersfield on August 8, 1934, and upon being advised by protestant that due to financial reasons she would not be present at the hearing, it was again postponed and transferred to convene on August 24, 1934, at 10:00 o'clock A.M. in Room 401 Public Works Building, Sacramento, California. Of this hearing applicant and protestant were duly notified. The applicant was advised that inasmuch as no appearance was to be made by the protestant it would not be necessary for him to appear either but should he wish to appear, the hearing would be re-set at Bakersfield at a later date.

GENERAL DISCUSSION

Although no appearances were made at the hearing and no testimony was introduced in support of the respective claims of applicant and protestant, it appears from the record that Mrs. Gunston acquired a right in 1911 to water originating in the "Jenny Lind Tunnel" and since that date has used the water continuously until April, 1930, when she moved to Los Angeles. Upon her departure to Los Angeles the water system was in full operation and she gave Mr. Stine permission to use water on his property which adjoined hers. A short time after her departure the water system ceased to function due to a leak in the ditch and apparently no effort was made to repair the leak. Mr. Stine now claims that the protestant's right has been lost by non user and has filed Application 7677 to appropriate the water.

There is some uncertainty as to the location of Stine's proposed point of diversion with relation to protestant's intake. Mr. Stine claims that it is below her point of diversion but from information received from the Forest Ranger it would appear that Mr. Stine's point of diversion is in fact some 400 feet above protestant's intake.

Under date of June 15, 1934, applicant informed this office that certain friends of his, Mr. and Mrs. W. G. Frost had acquired Mrs. Gunston's property at Havilah and therefore he could not see how she could use the water claimed. This statement was confirmed by W. G. Frost himself under date of June 21, 1934, who also informed this office that no protest would be filed by him against the approval of Application 7677. Also under date of July 26, 1934, George L. Kern, who owns property above applicant informed this office that Mr. and Mrs. W. G. Frost now owned the Gunston property.

Mrs. Gunston while admitting the sale of property, claims that

no water was involved in the deal and quotes from a letter addressed to her by Mrs. Frost as follows:

"We understand, Mrs. Gunston, there is no water involved in the deal, but as you said, if you do develop your water at some later date, we would appreciate it very much to have water for the place."

While this office is not in a position to determine whether or not Mrs. Gunston's claim of right has been lost by non user, it appears entirely clear that she is at the present time without a place of use, having disposed of her property in that locality. Being financially unable to appear at the hearing, she was, contrary to the general practice of this office, given an opportunity to present affidavits in support of her allegations but none were filed and there is nothing in the record to indicate that protestant has any immediate prospect for future development. On the contrary applicant owns the land upon which he intends to use the water, the Forest Service has signified that right of access will be granted as soon as the application has been approved and the uses to which applicant proposes to apply the water are useful and beneficial. It is therefore the opinion of this office that Application 7677 be approved subject to the usual terms and conditions.

O R D E R

Application 7677 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:

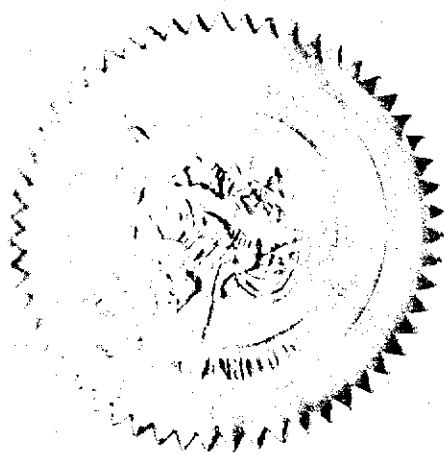
IT IS HEREBY ORDERED that Application 7677 be approved and that a permit be granted to the applicant subject to such of the usual terms

and conditions as may be appropriate.

WITNESS my hand and the seal of the Department of Public Works  
of the State of California this *8th* day of *September*, 1934.

EDWARD HYATT, State Engineer

BY *Harold Conkling*  
Deputy



*8/8/34*